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No. 85-27

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

LOS ANGELES UNIFIED SCHOOL DISTRICT; BOARD OF EDUCATION OF THE CITY OF LOS ANGELES; And HARRY HANDLER, SUPERINTENDENT, In His Official Capacity

Petitioners and Cross-Respondents,

vs.

LOS ANGELES BRANCH NAACP, BEVERLY HILLS-HOLLYWOOD NAACP; SAN PEDRO-WILMINGTON NAACP; WATTS NAACP; SAN FERNANDO VALLEY NAACP; And CARSON NAACP,

Respondents and Cross-Petitioners.

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

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CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a federal court, in a federal school desegregation case under 42 U.S.C. §1983, should apply claim preclusion to a state court judgment, which was limited by express reservation of federal law issues, and, in which a subsequent change in state law renewed the opportunity to litigate federal issues, but which closed without being so litigated?

LIST OF PARTIES

Petitioners And Cross-Respondents:

Los Angeles Unified School District; Board Of Education of the City of Los Angeles; and Harry Handler, Superintendent, In His Official Capacity (LAUSD).

Respondents and Cross-Petitioners:

Los Angeles NAACP, Beverly Hills - Hollywood NAACP, San Pedro-Wilmington Branch NAACP, Watts Branch NAACP, San Fernando Valley NAACP, and Carson NAACP (Cross-Petitioners).

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Petitioners and Cross-Respondents,

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CROSS-PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The en banc opinion of the Court of Appeals filed December 21, 984, as modified February 21, 1985, LANAACP v. LAUSD, 750 F.2d 731 (9th Cir. 1985) is in the Cross - Respondents' Appendix to

Petition For Certiorari at page 1a.

A copy of the February 21, 1985, en banc order of the Court of Appeals, modifying in part the majority opinion and denying both a rehearing and the suggestion for a rehearing by the entire court is also in the above referenced Appendix at page 121a.

Other reported decisions relating to the case at bar are:

Crawford v. Board of Education, 458 U.S. 527 (1982) (Crawford III); Board of Education of Los Angeles v. Superior Court, 448 U.S. 1343 (1980) (opinion in chambers); Bustop, Inc. v. Board of Education of the City of Los Angeles, 439 U.S. 1380 and 1384 (1978) (opinions in chambers); Los Angeles Unified School District v. Los Angeles Branch NAACP, 714 F.2d 946 (9th Cir. 1983), cert. denied sub nom. California State Dept. of

Education v. Los Angeles Branch NAACP, ___ U.S. ___, 104 S.Ct. 2398 (1984); Los Angeles Unified School District v. U.S. District Court for Central District of California, 650 F.2d 1004 (9th Cir. 1981); Los Angeles NAACP v. Los Angeles Unified School District, 518 F.Supp. 1053 (C.D. Cal. 1981); Los Angeles NAACP v. Los Angeles Unified School District, 513 F.Supp. 717 (C.D. Cal. 1981); Crawford v. Board of Education of the City of Los Angeles, 17 Cal.3d 280, 130 Cal.Rptr. 724, 551 P.2d 28 (1976) (Crawford I); Crawford v. Board of Education of the City of Los Angeles, 113 Cal.App.3d 633, 170 Cal.Rptr. 495 (1980) (Crawford II).

JURISDICTION

The issues raised by this petition originated with the denial by the District Court, Central District of California, on July 16, 1981 of the Los

Angeles Unified School District's (LAUSD) motions to dismiss or abstain under Rules 12(b)(1) and 12 (b)(6), Fed.R.Civ.P. Los Angeles NAACP v. Los Angeles Unified School District, 518 F.Supp. 1053,1055 (C.D. Cal. 1981). The District Court on August 12, 1981, certified its ruling for interlocutory appeal pursuant to 28 U.S.C. §1292(b), which was accepted by the Court of Appeals, Ninth Circuit, by order dated September 14, 1981.

Jurisdiction in the district court was invoked under the First, Ninth, Thirteenth and Fourteenth Amendments to the United States Constitution; 42 U.S.C. §§1981, 1983, 1988 and 2000d; 28 U.S.C. §§1331, 1343(3) and (4); and 20 U.S.C. §§2201 and 2202. See afore mentioned Appendix at pages 124a-125a.

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1) to

review a decision of the Court of Appeals, Ninth Circuit, which became final February 21, 1985. The LAUSD's Petition For Certiorari was timely filed on July 3, 1985 and received via U.S. mail by the Cross-petitioners local counsel on July 5, 1985. The time for filing the instant Cross-Petition extended through August 5, 1985.

STATUTORY PROVISION INVOLVED

28 U.S.C. §1738:

"The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

"The records and judicial proceedings of any such State, Territory or Possession, or copies thereof, shall

be proved or admitted in other courts within the United States, its Territories or Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States, its Territories or Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT OF THE CASE

This is a school desegregation case involving the rights of thousands of black school children attending schools in the nation's third largest school district, the Los Angeles Unified School District (hereafter "the LAUSD). The action follows litigation in the California state courts, entitled, **Crawford v. Board of Education.**

The Crawford Case

Crawford was originally filed August 1, 1963, in the Los Angeles Superior Court, as a Complaint For Declaratory Judgment and Injunction, applying to the segregated conditions of two LAUSD high schools.

On July 6, 1966, the Petitioners filed a Second Amended and Supplemental Petition for Writ of Mandate, charging

segregation, within the entire district in violation of both the federal and state constitutions.[1] On October 14, 1966, the Los Angeles Board of Education (hereafter, "the Board") answered. Those pleadings were the pleadings upon which the matter was tried, starting October 28, 1968.[2]

The state writ of mandate procedure, under California Code of Civil Procedure §1085, was unique for school segregation litigation, usually brought by injunction.

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[1] See, Second Amended and Supplemental Petition For Writ of Mandate, filed July 6, 1966, In the Appendix.

[2] See, Stipulation (1) For Amendment of Second Amended Petition For Writ of Mandate; (2) For Bringing in New Parties; (3) For waiver of C.C.P. §583; (4) For Waiver of Objection to Consideration of Facts Occurring Subsequent To Filing of Complaint, filed July 19, 1966, In the Appendix.

The **Crawford** case went to trial, in 1968, under a pre-trial stipulation and order which obligated the parties to determine whether the the Los Angeles Board was fulfilling its trustee duties under facts between 1963, the date of filing of the original writ, and 1968, the time of trial.[3/] Pre-trial discovery

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3/ The pre-trial stipulation for cutoff dates was wholly appropriate to such petitions for writ of mandate because the issue to be determined was one of whether or not the Board was performing its trustee duty under law. The specific stipulation was described by the trial judge as one which sought to define "the order of proof." None of the parties regarded it as a supplement to the pleadings or a cutoff date for liability. Both parties were given the conditional right to introduce pre-1963 evidence, upon motion, in the event it became necessary to prove or disprove the issue at hand. Neither party formally asked to open for earlier evidence, but the record contains some evidence concerning the Board's 1962 initiated Ad Hoc Committee on Student Integration, a report from which was issued in May 23, 1963. See, Minute Order, December 14, 1967, In the Appendix. See also, Reporters' Transcript On Appeal (hereafter, "RTOA"), December 14, 1967, In

was also limited, by another stipulation, to a period between May 1, 1963 and November 17, 1967, expressly excluding discovery of "facts occuring prior to May 1, 1963." 4/

During the respondent's case at trial, on March 21, 1969, the Crawford petitioners requested leave to be relieved of any effects of statements of

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(3/ cont.) the Appendix. The Motion To Direct the Order of Proof was brought on by Petitioners' Motion For Separate Trial of Severable Issues.

Needless to say, the reservation of pre-1963 evidence was only a major restriction on the minority petitioners' proofs, since a finding that the board was currently fulfilling its duty to minority students, as of the time of trial, would make the issuance of the writ unwarranted as a matter of law. A writ of mandate is not remedial in the sense of requiring the remedy of vestiges of past malfeasance by a school board that is no longer malfeasant. **Bruce v. Gregory**, supra

4/ See Stipulation Re Petitioners' Interrogatories and Request For Admission of Facts, filed November 17, 1967, In the Appendix.

their counsel waiving or eliminating the issue of the Board's "bad faith" 5/ from and after May 23, 1963 (the date of the Ad Hoc Committee Report).6/

Following trial, the Court issued its Findings of Fact and Conclusions of

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5/ See, Petitioners' Motion To Be Relieved of Waiver Or Stipulation, If Any, Re Issue of Respondent's Bad Faith, filed March 21, 1969, found in In the Appendix. In the context of the **Crawford** writ of mandate proceedings, the term "bad faith" does not have the same meaning as the term "de jure", as now interpreted by the courts. Judge Gittelson characterized the "bad faith" in the nature of a defaulting trustee who commits nonfeasance not out of ignorance of his duties under law, but out of conscious disregard for his trust obligation. See, Reporters' Transcript On Appeal, December 14, 1967, p. B-16, In the Appendix, for a working definition of the term "bad faith".

6/ See, Court Minutes of March 24, 1969, In the Appendix.

7/ The Judgment and Writ of Mandate, dated May 12, 1970 is in the Appendix. The Findings are voluminous and are not reproduced, at this time, in the Appendix.

Laws and its Judgment and Writ of Mandate, effective May 12, 1970.[7] The findings included a critical finding that the Board "has . . . since at least May of 1963, knowingly, affirmatively and in bad faith . . . by and through its affirmative policies . . . and practices, . . . segregated, de jure its students." The trial court ordered the Board to immediately devise and formulate a Master Plan for the integration of the schools within its district. Instead of complying with the mandate, the Board appealed.

In 1975, the California Court of Appeal reversed the Superior Court judgment [8] on the ground that the findings did not demonstrate that the Board inten-

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[8] See **Crawford v. Board of Education,** 120 Cal. Rptr. 334 (1975) (vacated by grant of Petition For Review in the California Supreme Court.)

tionally brought about segregation within the district. However, its intermediate opinion was vacated by the California Supreme Court.

In June, 1976, the California Supreme Court issued its landmark opinion in **Crawford v. Board of Education**, 17 Cal.3d 280, 130 Cal. Rptr. 724 (1976) (**Crawford I**). The Superior Court Judgment was affirmed, with some modification, on independent state grounds, stating:

> "that we do not rest our decision on this characterization because we continue to adhere to our conclusion in Jackson that school boards in California bear a constituitonal obligation to take reasonably feasible steps to alleviate school segregation 'regardless of its cause.'"
>
> (17 Cal.3d 280 at p. 285) (emphasis added)

Thereafter, the Judgment and Writ of Mandate, as modified, became final. No further appeal was or could be taken by

the Board because the California Supreme Court had fully severed any and all federal constitutional claims from the affirmed Judgment, positing its holding on independent state grounds alone.9/

Remedy proceedings were then undertaken in the Superior Court, beginning in February, 1977.

In November, 1979, when the Crawford remedial proceedings were in their third year after remand, and with one very controversial desegregation plan in its second year of implementation, the California electorate passed a legislative initiative, known as Proposition 1, amending the California Constitution to withdraw the power of state courts to make remedial orders which require pupil

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9/ See, **Jankovich v. Toll Road Comm'n.**, 379 U.S. 487 (1965); **Herb v. Pitcairn**, 324 U.S. 117 (1945).

school assignment or pupil transportation which, after re-review, are deemed unsupported under current federal case law.10/

Of particular consequence to the Crawford litigation, the proposition authorized the re-review and modification of:

> "every existing judgment, decree, writ, or other order of this state, whenever rendered which includes provisions regarding pupil school assignment or pupil transportation. . . ., as applied to the facts which exist at the time of such modification." (emphasis added)

This extraordinary provision of state constitutional law, enacted by the voters in hostile reaction to after unpopular mandatory pupil assignment and transportation orders were made in Los Angeles, clearly, was unprecedented. The Judgment, evidentiary findings, and

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10/ The text of Proposition 1 is set forth in full Appendix I, pp. 155A to 155A of the LAUSD Petition For Certiorari.

remedial orders enforcing the Judgment were all made subject to re-review, upon application by any interested person, even after final review and approval by intermediate courts or the California Supreme Court.

Following passage, the defendant Board immediately applied for modification of the 1980 remedial orders enforcing the Judgment. It did not apply for modificatin of the Mandate itself. The Superior Court judge, Paul Egly, denied the modification motions, on the ground that the 1980 remedial orders were authorized upon adequate findings of de jure segregation, already affirmed by express language of the California Supreme Court and wholely sufficient under federal case law. Judge Egly ordered implementation of a new plan, devised by the Court after findings of

the Board's recalcitrance in carrying out the original mandate.

Upon direct appeal of the denial of Proposition 1 modification, the California Court of Appeal re-reviewed the approved 1970 findings upon which the remedial orders were based.11/ That court, in **Crawford v. Board of Education**, 113 Cal. App.3d 633 (December, 1980) (**Crawford II**) held that the 1970 findings were, under current facts and federal case law, inadequate to support the 1980 remedial orders. The court vacated the lower court's remedial orders and remanded for further proceedings consistent with its opinion.

The California Supreme Court refused hearing on the case on March 11,

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11/ There was no attempt to re-review the 1970 evidence and trial record)

1981, and the Remittitur of the Court of Appeal issued the following day.[12/] Immediately, the Los Angeles Board acted to rescind 1980-81 school assignments to pairs and clusters, previously ordered and implemented by the Superior Court in enforcement of the mandate.

The **Crawford** petitioners sought appeal by certiorari in the U.S. Supreme Court on July 9, 1981, on the single issue of the constitutionality of Proposition 1. No review of the part of the Court of Appeal opinion construing and interpreting the 1970 Findings was requested. The **Crawford** petitioners continued, in the state court proceedings, to oppose the effectiveness of the Board's proposed limited, so-called "voluntary" methods, within the confines

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12/ The Remittitur is in the Appendix.

of application of Proposition 1.[13/]

In the interim, a third judge of the Superior Court, Robert Lopez, approved the District's plan and proceeded to summarily terminate the court's jurisdiction, proclaiming that the original Writ of Mandate had been satisfied, under the circumstances before the court.[14/]

After March 22, 1982 oral arguments in the United States Supreme Court, this Court issued its opinion, in **Crawford v. Board of Education**, 458 U.S. 527, 102 S.Ct. 3211 (June 30, 1982).

13/ Detailed findings of Superior Court Judge Paul Egly, after four months of hearings on remedy had found the same so-called "All-Voluntary Plan" to be ineffective and inadequate to bring about desegregtion in the District. See, July 7, 1980 Findings of Fact and Conclusions of Law. (voluminous)

14/ See, September 10, 1981, Superior Court Order Re Final Approval of School Board Desegregation Plan and Discharge of Writ of Mandate.

This Court found, in essence, that the Proposition was constitutional, in that the repeal of state law remedial standards, receding from a more stringent level to the level required by the Fourteenth Amendment, constituted no more than a "mere repeal of race related legislation or policy not required by the Federal Constitution in the first place", and did not, itself, offend the Fourteenth Amendment as an invalid racial classification. 102 S.Ct. at 3219.

The L.A. NAACP Case

Following the refusal of the California Supreme Court to hear the challenge to **Crawford II**, the NAACP filed suit[15/] in the district court on March 15,

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15/ The text of cross-petitioners' complaint is set forth in full in Appendix H, pp. 123A - 153A of the LAUSD Petition for Certiorari.

1981, charging historic de jure segregation in Los Angeles, in two causes of action.

Based on **Crawford II** and its remittitur, the LAUSD moved to dismiss on various grounds relating to the **Crawford** litigation. The district court denied the LAUSD motions.16/ Interlocutory appeal was granted. The case was argued in December, 1982.

Following the Supreme Court's decision in **Crawford III**, a panel of the Ninth Circuit opined, for the first time, that, in addition to the remittitur from the opinion in **Crawford II**, the Order of the Superior Court approving the Board's Desegregation Plan and terminating jurisdiction, made September 10, 1981, had

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16/ The text of the district court opinion is sef forth in Appendix C, pp. 79A - 101A of the LAUSD Petition for Certiorari.

become the final judgment upon which claim preclusion could now be based under California law. This order was relied upon as the final judgment, barring the NAACP plaintiffs, despite the fact that the order was entered five months after the instant federal court litigation was commenced and despite the fact that the order, by its own terms, was merely an order enforcing the final judgment entered in 1970 and, in no way modifying it.

The opinion of the three judge panel was that the parties were identical in both cases and that the issue of de jure liability of the school board had been fully litigated by the opinion in Crawford II, adversely to the minority school children. That panel applied claim preclusion to the NAACP, in the instant case, for any and all claims of

de jure segregation prior to September 10, 1981, the date of the Superior Court order terminating jurisdiction.

These cross-petitioners sought rehearing en banc. The Ninth Circuit withdrew the previous three judge panel opinion and granted rehearing en banc.

Rehearing en banc was held April 10, 1984. Subsequently, the Ninth Circuit rendered its opinion, applying claim preclusion for all claims of acts of segregation **prior** to the end of the **Crawford** trial in 1969.17/ The en banc panel held, in essence, that state claim preclusion aspects of res judicata were required to be applied to bar federal law claims arising before the end of the

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17/ The text of the Ninth Circuit en banc opinion is set forth in full Appendix A, pp. 1A to 54A of the LAUSD Petition For Certiorari.

Crawford liability trial. Cross-petitioners were permitted to litigate only claims arising after 1969.

The Board petitioned for rehearing and consideration by the full Ninth Circuit. That petition was denied February 12, 1985. The Board then, after one extension of time, filed its Petition For Certiorari on July 3, 1985, seeking to have the claim preclusion extended to all claims prior to September 10, 1981, the date of termination of jurisdiction in the state court.

This Cross-Petition For Certiorari is timely filed to challenge the part of the en banc opinion below which barred the cross-petitioners from litigating claims of de jure segregation before termination of the liability proceedings in **Crawford** in 1969.

This petition argues that, under

the exceptional circumstances of the case and the correct and reasonable application of California law, no claim preclusion should be applied to bar litigation of matters of school segregation prior to 1969. We seek affirmance of the decision of the district court below, so that the matter can go to trial on the First Amended Complaint, on both causes of action, without limitation or preclusion of claims or issues.

I

THE DECISION BELOW IMPROPERLY APPLIES 28 U.S.C. §1738, GIVING FULL FAITH AND CREDIT TO THE WRONG FINAL JUDGMENT IN THE CRAWFORD CASE AND IMPROPERLY APPLYING THE CALIFORNIA RES JUDICATA LAW TO THAT CASE TO BAR BLACK SCHOOL CHILDREN FROM LITIGATING THEIR CLAIMS IN FULL.

A. The Decision Below Gives Full Faith and Credit To the Wrong Final Judgment In **Crawford**, Setting Up A False Premise Of Claim Preclusion By Bar.

The en banc decision below is premised on an erroneous application of the facts and the California state law of claim preclusion. As a consequence, it is excessive in its preclusion. California courts would not give the same preclusive effects to the **Crawford** judgement. Under the Full Faith and Credit Clause, the district court is, similarly, not required to apply claim preclusion on so broad a scale.

The Ninth Circuit opinion below purports to give Full Faith and Credit to the **Crawford** judgment", without specifying which particular state court judgment it is crediting.[18/] In the context of the **Crawford** litigation and this litigation, **L.A. NAACP v. LAUSD**, in the district court, since 1981 and during the interlocutory appeal, there is considerable controversy as to **what judgment** is binding and **what effect** should be given to it. The court below, in cursory fashion reasoned that "The parties no longer dispute that there is now a final

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[18/] In its Petiton For Certiorari, the LAUSD continues to argue the path urged by Judge Sneed, i.e., preclusion as of the last day of the remedial proceedings. In the its Petition, it posits, "The specific issue presented by this application is whether the preclusive effect of the final judgment in **Crawford** shall apply as of the date of entry (September 10, 1981) or as of the much earlier date on which the liability hearing was completed (May 2, 1969)." (See, Petition For Writ of Certiorari, p.

5)

judgment on the merits in **Crawford.**" 750 F.2d at 737.

To the contrary, all parties and both courts below have taken differing views and the dispute continues, not on **whether** there is a final judgment in **Crawford**, but **what** is the final judgment in **Crawford** and what are its preclusive effects, if any.

Similar to the three judge panel opinion,[19/] withdrawn prior to the **en banc** rehearing, the Ninth Circuit opinion below premised claim preclusion upon the so-called "final judgment" inherent in the opinion of **Crawford II**, augmented by

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19/ In footnote 16 of the withdrawn opinion, Judge Sneed wrote, "While the **Crawford** plaintiffs prevailed on their state law claim, the federal claim was also litigated and decided, in favor of the defendants, See,**Crawford v. Board of Education**, 113 Cal. App 3d. at 649, 170 Cal.Rptr. at 506, and is therefore barred."

the last two orders of the **Crawford** remedial proceedings. The opinion extends its preclusion, retroactively, to all matters prior to 1963, **before** the filing of the first complaint in the Superior Court. However, the opinion below cuts off its preclusion for all matters **after** May 2, 1969, the last day of the liability trial in **Crawford.**

B. The Only Final Judgment Upon Which Claim Preclusion Could Be Based Is The 1970 Judgment And Writ of Mandate, As Partially Affirmed and Modified In **Crawford I** By The California Supreme Court.

To the contrary, the only final judgment in **Crawford**, which is, entitled to Full Faith and Credit and upon which any preclusion may, arguably, attach is, the 1970 Judgment and Writ of Mandate entered by Superior Court Judge Alfred Gitelson, as modified by the California

Supreme Court's 1976 mandate in **Crawford I.** 20/

The **Crawford** plaintiffs prevailed in the 1970 Judgment. The Judgment was modified in 1976 by the Supreme Court in two important respects. First, the Judgment was expressly affirmed only on grounds of violation of the California Constitution and not the United States Constitution. Second, the Judgment was modified to overrule the trial court's definition of a segregated school.21/

Under California law, there can be but one final judgment in a case. California Code of Civil Procedure §557.

20/ See **Cowdery, Lagiss**, infra re effect of partial affirmance.

21/ In this case, modification was made by direction of the reviewing court, while affirming the judgment, that the trial court was to make the modification of definition on remand. 17 Cal.3d at 285. See, 6 Witkin, California Procedure, Appeal §529,

In this case, that judgment was the 1970 Judgment and Writ of Mandate, as affirmed and modified by the California Supreme Court's decision in 1976 **Crawford I**, supra. See, **Lyon v. Goss**, 19 Cal.2d 659, 669-670, 123 P.2d 11 (1942); **Brown v. Memorial Nat. Home Foundation**, 158 Cal. App.2d 448, 322 P.2d 600 (1958).

The 1980 opinion and remittitur of the California Court of Appeal in **Crawford II** could not and did not modify the original judgment. By its very terms, it was only an appeal from two remedial orders of the Superior Court. The May 19, 1980 remedial order denied the Board's motion to apply Proposition 1's limitations to prior remedial orders, which utilized pupil reassignment and pupil transportation among its provisions. The July 7, 1980 remedial order denied approval of the Board's all-

voluntary Plan, while ordering the Superior Court's own plan into implementation.

Crawford II did not reverse or alter the state-based mandate to take affirmative steps to alleviate existing substantial school segregation, regardless of its cause. The decision's construction of Proposition 1 has been similarly construed by every court which has commented upon its effects, including this Court and the California Supreme Court. See, **Crawford v. Board of Education**, 458 U.S. 527, 102 S.Ct. 3211 at 3217, and n. 12 (1982) (Powell, J., for the majority); **Id.** at 3228 (Marshall, J., dissenting); **McKinny v. Oxnard Union High School District Board of Trustees**, 31 Cal.3d 79, 92, 181 Cal. Rptr. 549 (1982); and **Crawford II**, supra at 652, 655, 656. See also, **Los Angeles Unified School**

Dist. v. United States District Court, 650 F.2d 1004 at 1006 (9th Cir. 1981) (Ferguson, J., dissenting).

Proposition 1 worked a radical change in the pursuit of desegregation of schools in California and Los Angeles, in particular. It left the state courts with limited remedial options. See, **McKinny,** supra, at 93. California plaintiffs desiring access to more effective remedies, were left with these options: 1) to rely on convincing the local board to voluntarily implement pupil assignment or transportation remedies; 2) to make proof in state court, sufficient under federal case law to authorize these remedies, i.e., to prove that the existing segregation was deliberate and purposeful, and still had current effects; or, 3) to make their proof in the federal court, where the proposition

has no reach and effect and where the result is not subject to referendum or pocket veto by elected state judges.

C. If Any Preclusive Effects Can Come From A Final Judgment In **Crawford**, It Would Be The Merger Effects From The Judgment Favorable To The**Crawford** Plaintiffs.

Since the final judgment at issue in **Crawford** was favorable to the **Crawford** plaintiffs, California judgment law would require application of the claim preclusion effects of merger rather than the bar aspect of res judicata. Under the doctrine of merger, the plaintiff's original claim is extinguished and is said to be "merged" into the judgment. Restatement (Second) of Judgments §18, comment (a) (1982); Witkin, California Procedure, Judgment §§189, 190 and 191 and numerous cases cited therein.

D. The **Crawford** Judgment, As Affirmed, Did Not Merge Cross-Petitioners' Claims Of Intentional Segregation Brought About By Acts Prior To 1963, Because Those Issues Were Expressly Reserved By The Trial Court And By The California Supreme Court's Affirmance On Independent State Grounds Alone.

The law of merger can not be applied undiscerningly. California has refused to apply it and has recognized important exceptions to the doctrine of merger in situations fully applicable to this case. The entire analysis of merger and its applicability was ignored in the opinion below, because the opinion focuses solely and erroneously, on the bar effects of **Crawford II**.

Merger will not apply, and part or all of a claim will subsist as a possible basis for a second action where the court in the first action has expressly reserved the plaintiff's right to maintain the second action. The rule

that a party cannot split his cause of action is made inapplicable by exception. Restatement (Second) of Judgments §26, comment (b), pp. 235, 236 (1982). **United Bank v. Hunt**, 1 Cal.2d 340, 345, 34 P.2d 1001 (1934).

This merger exception is equally applicable when a trial court refuses to determine a plaintiff's rights upon a certain claim or when the court or parties explicitly reserve that claim. Reservation can also occur in the review and affirmance by appellate courts, under the Court's power to modify a judgment. See, e.g. **People ex rel. Dept. of Public Works v. Lagiss**, 223 Cal. App.2d 23, 49, 35 Cal. Rptr. (1963); **Cowdery v. London Etc. Bank**, 139 Cal. 298, 303 (1903). Additionally, under the related California doctrine of the law of the case, governing the binding effects, in the

same case, of the first appellate review of a judgment, the reservation of a claim, by express failure to reach it or partial affirmance by modification, serves the same purpose of preventing merger. Those matters of law expressly left out or open by an appellate court's determination and not necessary to it, clearly, can not be said to have been merged into the resulting judgment.

Rather than a decision that a party's right is foreclosed, the court's ajudication is, itself, a view that a party is entitled to litigate his right in another action. **Estate of Doyle**, 202 Cal. App.2d 434, 439, 21 Cal. Rptr. 123 (1962) [citing with approval, Restatement of Judgments §67, comment a. pp. 286, 287]; **Cason v. Glass Bottle Blowers Assn.**, (1951) 37 Cal2d 134, 141, 231 P.2d 6 [stating a judgment "is not res

judicata [merger] . . . as to any matters which the court expressly refused to determine and which it directed should be litigated in another forum or in another action."];22/ **Stark v. Coker** (1942), 20 Cal.2d 839, 843, 129 P.2d 390; **Estate of Liddle** (1958) 162 Cal. App.2d 779, 787, 309 P.2d 39; 3 Witkin, Cal. Procedure, §65, p. 1952; Restatement of Judgments, §67.

In **Estate of Liddle**, supra, the court adverted to a trial court's express order withholding ajudication of an issue as the the identity of heirs of a trust. It found the court's language to constitute "an unmistakable withdrawal of that issue from the proceeding," (162 Cal. App.2d at p. 13)

22/Cason is directly factually comparable to **Migra v. Warren City School District Board of Education**, ___ U.S. ___, 104 S.Ct. 892 (1984)

Two issues, critically essential to the present federal claim, in this appeal, and not essential to the claim in **Crawford** were expressly reserved by the trial court and by the 1976 opinion of the California Supreme Court. These are: 1) The probative use of pre-1963 evidence of acts of segregative intent by the LAUSD and other housing agencies, as alleged in the First Amended Complaint; and, 2) whether the Los Angeles schools were de jure segregated at the time of **Brown v. Board of Education,** 347 U.S. 483, 74 S.Ct. 686 (1954), or afterward, remaining unliquidated and exacerbated since then, under federal law.

Judge Gitelson, in his pre-trial orders and discussions with the parties, in his findings and Judgment, expressly reserved issues of segregation arising from pre-1963 evidence. The stipulations

reserving issues and evidence of prior claims appears on the face of the Judgment. (See, Judgment For Damages and Writ of Mandate, in Appendix I)

Similarly, the California Supreme Court, in expressly basing its holding on independent state grounds, not only affirmed the reservation of evidentiary issues with respect to pre-1963 segregation, but also expressly reserved judgment on the applicability of federal law issues of deliberate, purposeful, de jure segregation, even then equivocally understood to be required under the federal case law.23/

23/The court used consistent, similar language in describing the material findings at 17 Cal.3d at 302, 307, 308, and 310. In each instance, the court ignored findings dealing with intent, while approving the Judgment, further demonstrating their immateriality to the decision.

Judge Gitelson

Judge Gitelson reserved all issues arising out of the Board of Education's pre-1963 acts, expressly, because he regarded inquiry into them to be immaterial and unnecessary in determining the current issues under the petition for writ of mandate, as he saw them. This is evident from detailed review of the pre-trial conference held December 14, 1967. (R.T.O.A., December 14, 1967, pp. B-1 to B-5 and B-6 to B-8) (In Appendix B at pp. 39b - 47b and 49b - 53b) (See also, Court Minutes, December 14, 1967, In Appendix E)

These views were reconfirmed in proceedings as well, when commenting on his earlier reservation of the pre-1963 evidence, the trial judge later declared, on March 29, 1969, during the course of the Board's case, when plaintiffs requested leave to charge "bad faith":

> In my humble, considered opinion, it still is my opinion that the evidence prior to May 20th, 1963 would not be truly material, not relevant, in that what was done prior to that time presents a different question both of fact, of knowledge, so to speak, of conditions, that have existed from and after 1963, the Ad Hoc Committee Report. (emphasis added)
> (R.T.O.A., March 24, 1969 p. 7070 In Appendix G at pp. 95b - 97b)

Judge Gitelson's view on the materiality of pre-1963 evidence was very specifically influenced, shaped and affected by his view that it was unnecessary to require proof of such evidence under the state writ of mandate procedure, that he, himself, had urged the parties to utilize.[24/] See, e.g. **Bruce v. Gregory**, 65 Cal.2d 666, 671 (1967). See

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24/ The importance of this procedural posture to the trial judge is most clearly evident in the statements from early extended pre-trial colloquy about the plaintiffs' burden of proof under state mandamus procedures. See especially, R.T.O.A., December 14, 1967, pp. B-17 to B-20, In the Appendix D, pp 63b -67b.

also, (R.T.O.A., December 14, 1967, pp. B-17 to B-20, In Appendix D at pp.68b - 72b.)

The California Supreme Court

In its opinion in **Crawford I**, the California Supreme Court expressly acknowledged that its affirmance was without regard to any evidence of acts or events prior to 1963. In summarizing the factual findings, the court twice used the words "relevant time period" to acknowledge that the approved findings were based on evidence from 1963 - 1969 only. 17 Cal.3d at p. 288. It quoted from Judge Gitelson's most succinct finding concerning bad faith and de jure segregation, which itself is conditioned by the temporal limitation of "since at least May of 1963." 17 Cal.3d at p. 288.

In addition, the California

Supreme Court affirmed the Gitelson Judgment, expressly limiting its affirmance to those facts and issues supporting the school board's obligation under state law, to act regardless of cause. 17 Cal.3d at 285. 25/

Thus, the California Supreme Court expressly reserved final judgment on the central issues of de jure liability, arising from deliberate and purposeful acts of the Los Angeles school board, either prior to 1963 or afterward, because resolution of that issue was unecessary to its judgment.26/ Federal case law was deemed uncontrolling. No

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25/At the same time, the court noted it's view of the current state of the federal case law re de jure segregation. See, 17 Cal.3d at 298.

res judicata effects could flow from that decision. The opinion is final and binding on the parties as the law of the case.26/

26/ Moreover, the action of the NAACP in the instant case follows the very model of the kind of de jure segregation case expressly eschewed by the California Supreme Court in the **Crawford** opinion. The court criticized requirement for such actions because of perceived practical problems with definition, unending factual inquiries, historical encompassment, contributing cause of other state entities, private scope, potential for wide and unpredictable judgments, and litigative burden. (17 Cal.3d at pp. 298-300.)

II

BY APPLYING CLAIM PRECLUSION, UNDER THE CIRCUMSTANCES, TO FEDERAL CIVIL RIGHTS LAW CLAIMS NEVER FULLY LITIGATED IN THE STATE COURT, THE COURT BELOW GAVE MORE PRECLUSION THAN REQUIRED UNDER 28 U.S.C. §1738

A. Federal Courts, When Applying 28 U.S.C. §1738, Are Not Required To Give State Judgments And Orders More Preclusive Effect Than Those Orders Would Have In State Courts

Under recent decisions of this Court, federal courts are generally charged to give final judgments of state courts the same preclusive effects those judgments would be given in the state court under the state preclusion laws. **Allen v. McCurry**, 449 U.S. 90, 101 S.Ct. 411 (1980); **Kremer v. Chemical Construction Corp.**, 456 U.S. 461, 102 S.Ct. 1883 (1982); **Haring v. Prosise**, 462 U.S. 306, 103 S.Ct. 2368 (1983); **Migra v. Warren City School District Board of Education**, ___ U.S. ___, 104 S.Ct. 892 (1984).

In giving effect to the requirements of §1738, however, federal courts run the risk of failing to enforce the substantive policies of federal civil rights laws when they undiscerningly construe or apply the facts or the state law to preclude federal civil rights actions. In these cases, federal courts are equally enjoined by §1738 not to give the state judgment **more** preclusive effect than it would enjoy in the state court. **Union & Planters' Bank of Memphis v. Memphis**, 189 U.S. 71, 75, 23 S.Ct. 604, 606 (1903); **Haring**, supra, at 2373, n. 6.

The opinion below has applied 28 U.S.C. §1738 to construe state preclusion rules in an unreasonable manner, so much so that it should be deemed to be in conflict with the California precedents,[27/] by giving more preclusion to the state final judgment than that

judgment is

entitled. Such unreasonable construction requires this Court's supervision upon review.

B. The Opinion Below Can Not Declare Its Own Federal Preclusion Policy Of Election, Waiver or Estoppel, In Light of This Court's Refusal To Apply Similarly Urged Rules In **Migra** and **Prosise**.

In giving more preclusive effect than the state court would give, the opinion below contravenes this Court's consistently stated intention, in these cases, not to apply a distinct federal

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27/T We are not unmindful of this Court's stated policy that standing alone, a challenge to state-law determinations by the Court of Appeals will rarely constitute an appropriate subject of this Court's review. See, **Haring v. Prosise**, supra at 2575, n. 8. In this case, the errors are fundamental, ignoring constructions of **Crawford** made by this Court, with a strong overemphasis of claim preclusion effects, based on faulty factual and legal premises.

rule of claim preclusion. The opinion below applies a federal rule of claim preclusion to hold that cross-petitioners are also barred because they elected not to renew litigation of federal law issues in the state court, despite the opportunity to do so. This Court should exercise its supervisory authority to declare that there is no such rule of the federal courts, applicable to this case.

In **Migra**, supra, this Court reviewed a claim preclusion ruling of a circuit court involving a civil rights plaintiff who had been successful in achieving state court judgment and remedies of reinstatement and back pay, based on a breach of contract state theory. Her related state claim, described in the opinion as "sounding in tort", involved tortious, conspiratorial interference with the same contract rights. This court

noted that the tort cause of action had been "reserved and continued" by sua sponte action of the trial court, having been, later, dismissed without prejudice by the plaintiff after her successful judgment on the contract theory. **Id.**, at 895, fn. 2.

This Court granted review by certiorari in **Migra** because of the Court had left open in, **Allen v. McCurry**, 449 U.S. 90, 97, n. 10, 101 S.Ct. 411, 416, n. 10 (1980), "the possibility . . . that the preclusive effect of a state-court judgment might be different as to a federal issue that a §1983 litigant could have raised but did not raise in the earlier state-court proceeding." **Id.**, at 896, 897. (emphasis added) This Court also expressed that certiorari was necessary because of "differences among the Courts of Appeals" on the question of

claim preclusion's applicability to §1983 actions. **Id.**, at 896 and 897, n. 6.

This Court settled the open question by refusing to apply a federal standard which would limit state-court judgments by denying claim preclusion "in §1983 suits only as to <u>issues</u> actually litigated in state court." **Id.**, at 897. (emphasis added). In §1983 cases, state claim preclusion are to be accorded the same effect as state issue preclusion. If the state court would preclude the later federal claim, the federal court would be required to do so also.

In **Haring v. Prosise**, this Court granted certiorari in order to look at whether claims of waiver and estoppel from a state criminal defendant's failure to litigate a Federal Fourth Amendment claim in a state criminal proceeding, resulting from a guilty plea

given in a pre-trial hearing, would be sufficient to bar a subsequent federal court §1983 claim, on the basis of collateral estoppel. This Court affirmed the court below, denying preclusion to the guilty plea, under the circumstances, and in light of applicable Virginia law of collateral estoppel.

Similar to the instant case, the respondents urged that the mere possibility that federal issues could have been tried in the state court, and were not, constituted a waiver of the right to trial of these issues in any other forum, urging that a federal rule be so invoked.

In the instant case, the court below made what appears to be an extended analysis, under the rubric of a state law inquiry into the issue of whether the **Crawford** plaintiffs had a "full and fair opportunity" to litigate their de jure

claims in the state court and elected not to do so. It is said, thus, that the cross-petitioners should not be spared from the full burden of that part of claim preclusion which bars matters which could have been litigated in the prior proceeding and were not because of the prior parties' election not to do so, declaring:

"The de jure issue was originally litigated; it could have been reopened in a later stage of the proceedings when the incentive to pursue it was greater. Plaintiffs cannot simply move to federal court and start anew. (citing **Allen v. McCurry**)

"There is no manifest injustice in denying plaintiffs the opportunity to relitigate a part of a claim when they had a previous opportunity to do so but elected against it. **Stuart v. Real Estate**, 148 Cal. App.3d 1, 195 Cal. Rptr. 524, 526 (1983). The opportunities plaintiffs were afforded in the state proceedings both before and after the passage of Proposition I amply satisfy the requirements of due process. There is accordingly no constitutional barrier to our giving full faith and credit to the **Craw-**

ford judgment. (citing **Kremer**) (750 F.2d at 745)

This Court, in **Haring v. Prosise** refused to invoke a federal rule, urged upon it, urged, which would apply §1983 waiver and estoppel from a voluntary guilty plea in the prior criminal case. Though the court below used the rubric of state analysis of full and fair opportunity, it was, in reality, applying a similar federal waiver and estoppel rule to these plaintiffs to foreclose upon an election made by the **Crawford** plaintiffs in the state court before 1970 and between 1976 and 1981. No such election would be relevant under state preclusion law, because the judgment clearly reserved and severed federal law issues at the time of affirmance in **Crawford I.**

The opinion and so-called "opportunity" to litigate de jure segregation issues in **Crawford**, after remand, did not

create a new federal rule of waiver, election or estoppel that would require these cross-petitioners to be bound, merely because the **Crawford** case closed without renewed litigation of de jure issues. The Circuit Court went beyond this Court's declination to make a federal election, waiver or estoppel rule in **Haring v. Prosise**, to do that very thing in this case, under the state rubric of "Full and Fair Opportunity."

It is facile to find opportunities for litigation in the trial court, because the complaint in that case, though written in 1966, was pleaded broadly enough to cover state and federal issues. Moreover, it is just as easy to find opportunities for litigation of the de jure issues after remand from **Crawford II**, in 1981. The LAUSD constantly and cavalierly threw out the challenge,

knowing the Court and plaintiffs had no real inclination to do so. No discovery had been undertaken for the years before 1963, a formidible task by itself. The **Crawford** plaintiffs had not elected to seek United States Supreme Court review of the part of the **Crawford II** opinion which found the Gitelson findings inadequate. They elected only to have the Proposition declared unconstitutional, on its face, rather than as applied. When they entered the remand proceedings in the Superior Court, they confined themselves to a continued attack on the remedial adequacy of the LAUSD so-called "All-Voluntary Plan." They, therefore, had no realistic incentive to litigate in the state court while the issue of the proposition's constiutionality was pending in this Court, during 1981 and 1982.

Finally, the instant action was

filed on April 15, 1981, just more than a month after the California Supreme Court summarily refused to hear the emergency appeal of **Crawford II** (March 11, 1981) and the remittitur issued. Clearly, the simultaneous litigation of de jure issues in both the state and federal court would have strengthened the LAUSD's clarion call for federal abstention to the now-preferred and docile state court, the claim which dominated the first year of litigation in this case. Therefore, due to the federal court litigation, on more broadly pleaded issues, and already in progress, there was no realistic incentive for the **Crawford** plaintiffs to litigate liability in the state court.

This Court's candid review of the true, realistic litigative interests of the black students, after Proposition 1, if such were required, would certainly,

take parameters similar to the analysis in **Haring v. Prosise.**

C. Because There Exists Considerable Doubt As To Whether Or Not The Circuit Court Has Properly Applied And Construed The California Preclusion Law To The Correct Final Judgment In **Crawford**, This Court Should Exercise Its Power of Review.

These cross-petitioners do not seek to argue with this Court's settlement of the issues with respect to special federal standards in reviewing §1983 cases. We are convinced that the Court's holdings in these cases have established that §1983 cases will have no special standing, simply because that among §1983's purposes is that which seeks to protect United States citizens by giving them a federal forum, contrasted against those state forums, judicial or administrative, which would afford less than adequate protection of federal rights.

See, e.g., **Mitchum v. Foster**, 407 U.S. 225, 241-242, 92 S. Ct. 2151, 2160-2161, 32 L.Ed.2d 705 (1972).

However, we note this Court's stated that it was unable to determine from the Sixth Circuit court's opinion in **Migra** "whether the court was applying what it thought was the Ohio law of preclusion." **Id.**, at 899. As a result, this Court vacated the circuit court opinion, with direction that the district court first determine the applicable Ohio preclusion law. **Id.**, at 899.

In the instant case, differing from **Migra**, it is clear that the circuit court claims to be applying the California preclusion law. That application sharply differs, however, from the application of the district court, which, looking at the same history in **Crawford** and having been presented with the same

appellate remittitur of **Crawford II**, refused to credit the opinion and remittitur as a "final judgment" for state preclusion purposes against cross-petitioners.

Moreover, these cross-petitioners have demonstrated, in their previous argument, that there exists considerable doubt as to whether or not the circuit court has correctly applied and construed the California preclusion law to the proper final judgment in **Crawford**. Consequently, review on certiorari by this Court would be warranted to determine, first which judgment in **Crawford** is the final judgment to be given effect, if any. If we are correct that only the Judgment and Writ of Mandate, as modified and reserved, correct final judgment for preclusion purposes, there is no need to even entertain a waiver issue, as did the

opinion below.

Only final, authoritative determination of these important issue, by this Court, will be of assistance to the courts below to control future disposition of this case.

This Court made the final review and construction of the effects of California Proposition 1's constitutionality. See, **Crawford v. Board of Education**, 458 U.S. 527, 102 S.Ct. 3211 (1982). In so doing, this Court did not have before it any issue as to the correctness of the state appellate court's review of the 1970 findings. Review of that issue was not requested by the **Crawford** petitioners. Moreover, at the time the **Crawford** case was argued and decided in this Court, the instant case was already on interlocutory appeal on the abstention, res judicata and collateral estoppel

questions, now before this Court. The majority opinion of Justice Powell takes care to note that this case was pending in the federal court, without expressing any views on the propriety of the litigation. See, **Crawford**, 102 S.Ct. at 3216, n. 10.

Upon this requested review, this Court could say, authoritatively, that the federal de jure issues were, indeed, expressly reserved by the California Supreme Court's holding in **Crawford I**. This Court said as much in its **Crawford** opinion, without expressing the significance of the reservation on the instant pending litigation or the remand proceedings in **Crawford**, which were then closed. **Id.**, at 3214 and n.2.

However, the Circuit Court has not grasped the significance of the state court reservations, in order to correctly

apply merger principles to the genuine final judgment in **Crawford** If federal issues, especially those based on pre-1963 evidence, were expressly reserved by the parties or, sua sponte, in the affirmed judgment in **Crawford**, as these cross-petitioners maintain, then the Circuit court below was wrong in holding to the contrary that the federal matters were determined with finality in **Crawford.**

In the opinion below, the Circuit Court expressly held that state law would, consequently, preclude "all segregative acts of the District occurring prior to commencement of the **Crawford** litigation in August 1963." 750 F.2d at 739. On this claim, the Circuit Court cited no California authorities, but merely adverted to a general principle from the Restatement (Second) of

Judgments (1982), which, itself, is contrary to express authority recognizing exceptions to claim splitting rules where there has been a reservation of issues and claims. The holding gives no effect to the trial court's reservation of pre-1963 factual evidence or the California Supreme Court's express reservation of federal claims. This Court's authoritative voice would speak mightily.

Additionally, this Court noted in its **Crawford** opinion that the California Supreme Court "based its affirmance solely upon the Equal Protection Clause of the State Constitution" and that it "explained that federal cases were not controlling." 102 S.Ct. at 3214, and n. 2. If federal law issues were, thereby, formally severed from the case by the California Supreme Court, the Circuit Court was also wrong in holding that "the

first action precludes the second [solely] if the first court had jurisdiction to ajudicate both grounds." 750 F.2d at 739.

CONCLUSION

This court should exercise its own power of review on certiorari to give specific and authoritative guidance to the courts below for the further proceedings in this matter. The claim preclusion of the opinion below is based upon unreasonable construction of the state law, because of fundamental errors in construing the unique factual setting of this case amidst the complex litigation in **Crawford**. This Court's clear guidance is necessary in these exceptional and important cases,, where personal and present federal school desegregation rights are sought to be protected against such intense opposition. The LAUSD should

not be presented with a clean slate, after so many years of obdurate refusal to do what is right.

Respectfully submitted,

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No. 85-27

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

LOS ANGELES UNIFIED SCHOOL DISTRICT; BOARD OF EDUCATION OF THE CITY OF LOS ANGELES; And HARRY HANDLER, SUPERINTENDENT, In His Official Capacity

Petitionersand Cross-Respondents,

vs.

LOS ANGELES BRANCH NAACP, BEVERLY HILLS-HOLLYWOOD NAACP; SAN PEDRO-WILMINGTON NAACP; WATTS NAACP;SAN FERNANDO VALLEY NAACP; And CARSON NAACP,

Respondents and Cross-Petitioners.

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

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APPENDIX

Pursuant to Rule 21 (k) of the Supreme Court Rules, the decision of the court below whose decision is to be reviewed is the February 12, 1985, En Banc Opinion of the United States Court Of Appeals, Ninth Circuit, which is already before the Court in the Petitioners and Cross-respondents' Appendix "A" to their petition at pages 1a thru 54a. The decision of the trial court is similarly before the Court in Appendix "C" at pages 79a thru 101a.

APPENDIX A

SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.
PETITIONERS,

VS.

BOARD OF EDUCATION OF THE CITY
OF LOS ANGELES,
RESPONDENT.

SECOND AMENDED AND SUPPLEMENTAL PETITION FOR WRIT OF MANDATE

Pursuant to leave of court Petitioners file their Second Amended and Supplemental Petitioner for Writ of Mandate and allege as follows:

FIRST CAUSE OF ACTION

1. Petitioners are Negro

pupils and pupils of Mexican descent attending public schools within the Los Angeles School District (hereinafter referred to as the "District") who are racially segregated in the use and enjoyment of said public schools in that a substantial racial imbalance exists in the schools attended by said pupils.

Petitioner Dollie Puth Miles is a fourteen year old Negro child; she attends Markham Junior High School.

Petitioner Verde Darnell Miles is an eleven year old Negro child; she attends Ritter Elementary School.

Petitioner Maryann Miles is a seven year old Negro child; she attends Ritter Elementary School.

Petitioner David Rodriquez is a six year old child of Mexican descent; he attends Harrison Street Elementary School.

Petitioner Patricia Ann Sanchez is a ten year old child of Mexican descent; she attends Soto Street Elementary School.

Petitioner Ramon Jose Sanchez is a twelve year old child of Mexican descent; commencing in September, 1966, he will attend Hollenbeck Junior High School.

Petitoner Raul Joaquin Sanchez is a twelve year old child of Mexican descent; commencing in September, 1966, he will attend Hollenbeck Junior High School.

Petitioner Alexander J. Sanchez is a fifteen year old child of Mexican descent; he attends Lincoln High School.

Petitioner Karen Patricia Lynn Wheeler is a five year old Negro child; commencing in September, 1966, she will attend the 75th Street Elementary School.

Petitioner Cathy Lynn May is a sixteen year old Negro child; she attends Jordan High School.

Petitioner Loretta May is a fourteen year old Negro child; she attends Markham Junior High School.

Petitioner Lenard May is a twelve year old Negro child; he attends Markham Junior High School.

Petitioner Joyce Maria Bryant is a nine year old Negro child; she attends the 116th Street School.

Petitioner William Bernard Wilcox, Jr., is an eight year old Negro child; he attends the Trinity Street Elementary School.

Petitioner Arby Enrico Fields is a six year old Negro child; he attends the 109th Street Elementary School.

Petitioner Jacqueline Lorraine Hopkins is an eight year old Negro child;

she attends the Trinity Street School.

Petitioner Autumn Renee Wright is a five year olf Negro child; commencing in September, 1966, she will attend the Trinity Street Elementary School.

Petitioner Alfred Graylin Wright is an eight year old Negro child; he attends Mar Vista Elementary School pursuant to the transport a child program under which his parents are required to bear the cost of transporting said Petitioner from the school in which service area he resides, a segregated school, to a school outside of his service area.

2. Petitioner bring this action on their own behalf and on behalf of thousands of other Negro pupils and pupils of Mexican descent attending public schools within the District who

are racially segregated in the use and enjoyment of said public schools in that a substantial racial imbalance exists in the schools attended by said pupils. (Petitioners and other Negro pupils and other pupils of Mexican descent are hereinafter collectively referred to as "said pupils").

3. Said pupils are so numerous as to make it impractical to bring them all before this court.

4. The subject of this action is a matter of interest to said pupils in that said pupils are directly and substantially adversely affected by attendance at said public schools as aforesaid.

5. Respondent Board of Education of the City of Los Angeles (hereinafter referred to as "Respondent") is the governing agency administering the

public schools within the District.

6. Respondent operates, controls, directs and maintains certain elementary, junior high and high schools as racially segregated schools attended predominately, and in certain cases, exclusively, by Negro pupils and pupils of Mexican descent. A list of certain of such racially segregated schools is attached hereto marked Exhibit "A" and by this reference incorporated herein as though fully set forth.

7. Respondent operates, controls, directs and maintains certain elementary, junior high and high schools as racially segregated schools attended predominately, and in certain cases exclusively, by caucasian pupils, and a list of certain such racially segregated schools is attached hereto, marked Exhibit "B" and by this reference

incorporated herein as though fully set forth.

8. Respondent requires and at all times material hereto has required said pupils, except in special cases, to attend racially segregated schools, despite the desire and right of the pupils to attend non-racially segregated public schools.

9. Respondent permits and at times material hereto has permitted certain pupils attending public schools within the District to transfer from one public school to another within the District in such a manner as to maintain and increase instead of alleviate racially segregated conditions in either or both of said schools. Such transfers are permitted pursuant to respondent's rule and policy allowing caucasian pupils attending racially balanced schools to

transfer outof said schools to schools in which all or substantially all of the pupils are of the transferee's own race. Despite respondent's knowledge of such transfers and respondent's knowledge that the effect of such transfers is to maintain and increase instead of alleviate racially segregated conditions in the public schools within the District, respondent has permitted and continues to permit such transfers.

10. Respondent is selecting and at times material hereto, has selected locations for construction of public schools, which selection results, to the respondent's knowledge, in the maintenance and increase instead of alleviation of the racially segregated conditions in the public schools with the District. Such selections have occurred in the following, among other cases:

Alain Locke High School and Crenshaw High School.

11. Respondent maintains and determines and at all times material hereto has maintained and determined individual school service areas, which areas to respondent's knowledge perpetuate and increase instead of alleviate racially segregated conditions in the public schools within the District.

12. Respondent is constructing and at times material hereto has constructed public schools and improvements thereof, which construction and improvements have resulted, to respondent's knowledge, in the maintenance and increase instead of alleviation of racially segregated conditions in the public schools within the district. Such construction and

improvements have occurred in the following, among other cases: Jordan High School, Sylmar High School, Fremont High School and James Monroe High School.

13. Respondent is doing and at times material hereto has done certain acts in addition to those specifically set forth in paragraphs 8 through 12 above, which acts, to respondent's knowledge, maintain and increase instead of alleviate the racially segregated conditions in said public schools. Said acts are not fully known to petitioner at this time and when said acts have become known to petitioners, petitioners will request leave of court to amend their petition herein or to offer proof thereof.

14. Respondent at all times material hereto has failed to take reasonable steps to alleviate and

eliminate racially segregated conditions in the public schools within the District. Among the reasonable steps available to respondent for the alleviation and elimination of said racially segregated condition, which steps respondent has failed to take, are the following:

Redrawing school service areas;

Construction of educational parks and educational complexes;

Adoption of the "Princeton Plan" of school pairing to expand size of school service areas;

Adoption of specialized curricula programs involving use of "magnet schools";

Modification of the permissive transfer system to implement instead of defeat integration.

15. During the month of June,

1965, petitioner submitted to respondent a plan for alleviating racially segregated conditions in certain public schools in the district. A true and correct copy of said plan is attached hereto and marked Exhibit "C" and by this reference incorporated herein as though fully set forth. Respondent at all times since said date has failed and refused to adopt said plan or to adopt any plan or to take any action to alleviate or eliminate said racially segregated conditions but instead has continued to act in the manner set forth in paragraphs 8 through 14 above.

16. Petitioners and others have demanded of respondent, that respondent cease doing the acts described in paragraphs 8 through 13 above and that respondent take reasonable steps to alleviate and elminate said racially

segregated conditions. In the following instances, among numerous others, said demands have been made upon respondent:

On or about August 19, 1963, there was presented to the Board of Education a demand that the Board take immediate action to eliminate segregation in the public schools within the district. At said time and place a resolution was submitted to the Board describing the psychological and sociological injuries suffered by pupils of the schools within the district as a consequence of the segregated conditions in said schools.

On or about September 5, 1963, there was presented to the Board of Education a plan urging the redrawing of school service areas, integration of classrooms, the transportation of children when necessary in order to

eliminate racial imbalance, a recommendation for the adoption of the "Princeton Plan" for the integration of elementary schools, a request for faculty integration, and a request for expansion of the program of compensatory education.

On or about September 23, 1963, there was presented to the Board of Education a demand that the Board adopt the use of the "Princeton Plan" for the integration of elementary schools, that the Board utilize "Demonstration Schools" in the segregated areas of the school district in order to demonstrate the methods and effect of integration in the schools; and that the Board commence maintaining statistics on the racial composition of schools within the District.

On or about March 24, 1966, there was presented to the Board a demand

for the limitation of the open transfer system together with a claim that said system results in an increase rather than an elimination or alleviation of racial imbalance in the schools; at said time and place there was submitted to the Board a demand that the school service areas for certain schools within the district be redrawn in order to eliminate and alleviate racial imbalance in said schools.

On or about March 24, 1966, there was submitted to the Board a demand that the Board direct the Superintendent of Schools to prepare a "Master Plan" to abolish de facto segregation; said demand contained specific recommendations as to the methods of accomplishing said result including, among others, the methods set forth in paragraph 14 above.

Respondent has refused and

failed to comply with said demands, requests, recommendations or any of them and has refused and failed to comply with all other requests, recommendations and demands of petitioners and others.

17. The acts of respondent set forth in paragraph 8 through 13 and the failure of respondent to take reasonable steps to alleviate and elminate said racially segregated conditions deprive and will continue to deprive said pupils of equal opportunities for education and deny them the equal protection of the law under the 14th Amendment of the United States Constitution and Article I Section 11 of the California Constitution, due process of law under the 14th Amendment of the United States Constitution and Article 1 Section 13 of the California Constitution.

18. The acts set forth in

paragraphs 8 through 13 above and the failure of respondent to take reasonable steps to alleviate and eliminate said racially segregated conditions result in irreparable injuries to said pupils for which said pupils have no adequate remedy at law, in that segregated schools provide inferior educational opportunities for the pupils thereof and in that segregated schools result in psychological injury to the pupils thereof.

19. Unless ordered by this Court to refrain from doing the acts set forth in paragraphs 8 through 13 above and unless ordered by this Court to take affirmative steps to alleviate and eliminate said racially segregated conditions, respondent will continue to do said acts and will fail to take said affirmative steps.

WHEREFORE, Petitioners seek for themselves and for all of said Negro pupils and pupils of Mexican descent relief as follows:

A. For a Writ of Mandamus ordering reopndent to refrain from doing the following acts:

1. Requiring pupils to attend racially segregated schools;

2. Permitting pupils to transfer from one public school to another within the District in such a manner as to maintain or increase instead of alleviate racially segregated conditions in either or both of said schools;

3. From selecting locations for construction of public schools, which selection results in the maintenance or increase instead of alleviation of the racially segregated conditions in the

public schools within the district.

4. From maintaining and determining individual school service areas, which areas maintain or increse instead of alleviate racially segregated conditions in the public schools within the district.

5. From constructing public schools and improvements thereof, which construction and improvements result in the maintenance or increase instead of alleviation of the segregated conditions in the public schools within the district.

6. From doing any acts which maintain or increase instead of alleviate the racially segregated conditions in the public schools within the District.

B. For a Writ of Mandamus ordering respondent to take affirmative steps to correct said racially segregated

conditions.

C. For an alternative writ of mandate or for an order to show cause ordering respondent to show cause whyit should not be ordered forthwith to refrain from doing the acts described in paragraph A above and to take affirmative steps to correct said racially segregated conditions:

D. For an order pendente lite requiring respondent to submit to the court a plan for the elimination and alleviation of the racially segregated conditions in the public schools within the district on or before a date to be set by the court.

E. For such other relief as the court deems' appropriate.

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LAWRENCE SPERBER
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LOREN R. ROTHSCHILD
3540 Wilshire Boulevard
Los Angeles 5, California
EDWARD MEDVENE
625 South Kingsley Drive
Los Angeles 5, California

By /s/ A. L. Wirin
A. L. WIRIN
Attorneys for Petitioners

EXHIBIT A

SEGREGATED SCHOOLS IN LOS ANGELES

ELEMENTARY SCHOOLS - NEGRO

Alta Loma
Ascot Avenue
Avalon Gardens
Budlong Avenue
Burnside Avenue
Cimarron Avenue
Compton Avenue
Eighty-Seventh Street
Fifty-Ninth Street
Fifty Second Street
Figueroa Street
Florence Avenue
Forty-Ninth Street
Graham
Grape Street
holmes Avenue
Hooper Avenue
Lillian Street
Main Street
Manchester Avenue
Marvin Avenue
Menlo Avenue
Miramonte
Nevin Avenue
Ninety-Fifth Street
Ninety-Ninth Street
Ninety-Second Street
Ninety-Seventh Street
Ninety-Sixth Street
Ninety-Third Street
Normandie Avenue
One Hundred Eighteenth Street
One Hundred Eleventh Street
One Hundred Ninth Street
One Hundred Second Street

One Hundred Sixteenth Street
One Hundred Twelfth Street
One Hundred Twenty-Second Street
Parmelee Avenue
Raymond Avenue
Ritter
Russell
San Pedro Street
Seventy-Fifth Street
Seventy-Fourth Street
Seventy-Ninth Street
Sixty-Eighth Street
Sixty-First Street
Sixty-Sixth Street
South Park
Thirty-Sixth Street
Trinity Street
Twentieth Street
Twenty-Fourth Street
Virginia Road
Wadsworth Avenue
Weigand
West Athens
West Vernon Avenue
Western Avenue
Woodcrest

ELEMENTARY SCHOOLS - MEXICAN

Ann Street
Breed Street
Bridge Street
Brooklyn Avenue
City Terrace
Dacotah Street
Dorris Place
Eastman Avenue
El Sereno
Euclid Avenue
Evergreen Avenue
First Street
Ford Boulevard

Fourth Street
Gates Street
Glen Alta
Griffin Avenue
Hillside
Humphreys Avenue
Robert Hill Lane
Latona Avenue
Lorena Street
Malabar Street
Marianna Avenue
MacDonnell Avenue
Murchison Street
Riggin Avenue
Rowan Avenue
Second Street
Sheridan Street
Soto Street
Utah Street

ELEMENTARY SCHOOLS
(OUTSIDE OF LOS ANGELES)

Barton Hills - San Pedro (Mexican-American)
Broadway - Venice (Negro and Mexican-American)
El Dorado Avenue-Sylmar (Mexican-American)
Hawaiian Avenue-Wilmington (Negro and Mexican-American)
Pacoima - Pacoima (Negro)
Sunset Avenue - Venice (Negro)
Vaughn Street - San Fernando (Negro)
Wilmington Park-Wilmington (Negro)

JUNIOR HIGH SCHOOLS

Audubon
Berendo
George Washington Carver
Henry Clay

Charles Drew
Thomas A. Edison
James A. Foshay
Samuel Gompers
Bret Harte
Horace Mann
Edwin Markham
Mount Vernon
John Muir
Pacoima (Pacoima)

SENIOR HIGH SCHOOLS

Dorsey)
Fremont)
Jefferson) Negro
Jordan)
Manuel Arts)

Roosevelt - Mexican
Washington
San Fernando (San Fernando) - Negro

EXHIBIT B

SEGREGATED SCHOOLS IN LOS ANGELES SCHOOL DISTRICT ATTENDED PREDOMINATELY OR EXCLUSIVELY BY CAUCASIANS

Elementary

Overland
Mar Vista
Richland
Clover
Charnock Road
Palms
Castle Heights
Canfield Avenue
Shenandoah
Carthay Center
Hancock Park
Third Street
Cahuenga
Crescent Heights
Shenandoah

Junior High

Emerson
Airport
Wright
Palms
Webster
Bancroft
Berendo
LeConte
Audobon
Mt. Gleason

Senior High

University
Westchester

Hollywood
Fairfax
Birmingham
Monroe
Burroughs
Sylmar

APPENDIX B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.
PETITIONERS,

VS.

BOARD OF EDUCATION OF THE CITY OF LOS ANGELES,
RESPONDENT.

STIPULATION (1) FOR AMENDMENT OF SECOND AMENDED PETITION FOR WRIT OF MANDATE; (2) FOR BRINGING IN NEW PARTIES; (3)FOR WAIVER OF C.C.P. SECTION 583; (4) FOR WAIVER OF OBJECTION TO CONSIDERATION OF FACTS OCCURRING SUBSEQUENT TO FILING OF COMPLAINT

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective attorneys, that

(1) The attached pages entitled "Second Amended and Supplemental Petition For Writ of Mandate", which pages constitute an amendment of the Second Amended Petition for Writ of Mandate on file herein, be substituted in place of page 1 of said Second Amended Petition for Writ of Mandate and be designated as page 1 and 1a thereof; Respondent shall have until October 10, 1966 within which to plead or take such other action as may be proper.

(2) The petitioners named in said Second Amended and Supplemental Petition for Writ of Mandate be deemed to be parties to this proceeding;

(3) Respondent shall not file or make any motion herein under or pursuant to the provisions of California Code of Civil Procedure Section 583 or take any other steps intended or resulting in

dismissal of this action on account of the failure of petitioners to bring this action to trial within the time limits specified in said Section 583. Provided, however, that Respondent shall not be precluded hereby from making such motion or taking such steps if petitioners have failed to bring this action to trial within two years from the date of filing of petitioners' Second Amended and Supplemental Petition for Writ of Mandate.

(4) The parties hereto shall not file or make any motion herein or take any other steps intended or resulting in precluding any party from introducing in evidence, or in precluding the court from considering as material and relevant, evidence pertaining to events occurring subsequent to the date upn which the first complaint was filed herein merely

because said events occurred subsequent to the date upon which the frist complaint was filed herein. The rights of petitioners, if any and the duties of respondent, if any, shall be determined as of the time of trial.

DATED: July 19, 1966.

A. L. WIRIN
FRED OKRAND
LAWRENCE SPERBER
LOREN R. ROTHSCHILD
EDWARD MEDVENE

By /s/ A. L. Wirin
A.L. WIRIN
Attorneys for Petitioners

HAROLD W. KENNEDY, County Counsel
JERRY F. HALVERSON, Legal Adviser

By /s/ Jerry F. Halverson
JERRY F. HALVERSON
Attorneys for Respondents

IT IS ORDERED that the foregoing Second Amended and Supplemental Petition For Writ of Mandate be filed pursuant to the terms of the foregoing stipulation

which are made a part hereof by reference.

IT IS FURTHER ORDERED that the persons named in the Second Amended and Supplemental Petition For Writ of Mandate be and hereby are made parties to this action.

DATED: July 19, 1966.

/s/ Alfred Gitelson
Judge of the Superior Court

APPENDIX C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.
PETITIONERS,

VS.

BOARD OF EDUCATION OF THE CITY OF LOS ANGELES,
RESPONDENT.

STIPULATION RE PETITIONERS' INTERROGATORIES AND REQUESTS FOR ADMISSION OF FACTS

IT IS HEREBY STIPULATED AND AGREED, by and between petitioners and respondent, through their respective counsel of record, as follows:

1. Respondent's answers to

petitioners' Interrogatories, and its responses to petitioners' Requests for Admission of Facts, heretofore filed and served on or about September 1, 1967, may be limited to the period May 1, 1963 to date. Until further order of the Court, respondent shall not be required to answer or respond to any interrogatory or request for admission of facts, or any part thereof, to the extent such interrogatory or request for admission of facts relates to facts or events occurring prior to May 1, 1963.

2. This stipulation, and the order entered hereon, is without prejudice to petitioners' right to move the Court, on notice, for an order directing respondent to answer or respond to any interrogatory or request for admission of facts, or any part thereof, relating to matters and facts occurring prior to May 1, 1963.

Dated: November 17, 1967

BAYARD F. BERMAN
SOL ROSENTHAL
MICHAEL BERGMAN
A.L. WIRIN
FRED OKRAND
LAURENCE R. SPERBER
LOREN R. ROTHSCHILD
EDWARD M. MEDVENE

By /s/ Bayard F. Berman
Bayard F. Berman
Attorneys for Petitioners

HAROLD W. KENNEDY, County Counsel
CLARENCE H. LANGSTAFF, Assistant County Counsel
RAYMOND W. SCHNEIDER, Deputy County Counsel
RON APPERON, Deputy County Counsel
JERRY F. HALVERSON, Legal Adviser

By /s/ Raymond W. Schneider
Raymond W. Schneider
Attorneys for Respondent

IT IS SO ORDERED:

Dated: November 17, 1967

/s/ Alfred Gitelson
Judge

APPENDIX D

IN THE COURT OF OF APPEAL OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.

PETITIONERS-RESPONDENTS,

VS.

BOARD OF EDUCATION OF THE CITY

OF LOS ANGELES,

RESPONDENT-APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF

LOS ANGELES COUNTY

HONORABLE ALFRED GITELSON, JUDGE

REPORTERS' TRANSCRIPT OF APPEAL

Volume B

Pages B-1 thru B-20

December 14, 1967

LOS ANGELES, CALIFORNIA, THURSDAY, DECEMBER 14, 1967, 8:45 A.M.

- - - -

THE COURT: Crawford versus Board of Education. The matter today is the, quote, Motion Of Petitioners For Separate Trial of Severable Issues.

MR. BERMAN: Bayard F. Berman for the plaintiffs.

MR. LANGSTAFF: Clarence H. Langstaff and Raymond W. Schneider for the defendants.

THE COURT: Mr. Schneider, as I understand the motion as made -- well, pursuant to conversations had in chambers on at least two conferences -- the purpose was for the Court to direct the period of time, among other things, as to, oh, the trial that we've had, let's call it the first portion, if you want to, of the trial that we've had, let's

call it the first portion, if you want to, of the trial that we've had, it being the Court's opinion that there was no purpose to be served nor was there an issue, truly, concerning the period of time prior to the -- what is the name of that report about which I'm always forgetting?

MR. BERMAN: The report of the de facto committee, I believe, on equal education --

THE COURT: Ad hoc.

MR. BERMAN: -- Ad Hoc Committee report.

THE COURT: On or about -- when was that?

MR. SCHNEIDER: I believe it was May of '63.

MR. BERMAN: Yes, we're using the date of May 1963.

MR. SCHNEIDER: Your Honor, my

understanding is that that portion of it was settled by the stipulation 00

MR. BERMAN: But that only applied to the discovery, unfortunately.

THE COURT: That stipulation was pursuant to the Court's suggestion that the cause of that fell on the part of the Court. Therefore it would be needless work on the part of the petitioner and the respondent to have discovery prior to that time. The reason I'm bringing it up is because, number one, it was never, at least, the thought of the Court -- and I'm quite certain the counsel for the petitioner -- there was no intent on the part of the Court nor on the part of the petitioner, Mr. Berman, to split any cause of action. It was a query of the Court directing the, let's call it, the order of proof in which the Court was of the opinion and still is,

after having reviewed it again, that there would be, in any humble opinion, no purpose, perhaps no materiality, at the beginning, at least, to go into the period of time prior to the ad hoc committee repot of 1967 --

MR. BERMAN: 1963, sir.

THE COURT: 1963 -- and that our question here was insofar as the petitioner is concerned, one, is that which the Board has been and is doing, including the plans, including the programs, including what in fact is being done, a nonperformance of a duty imposed by law upon it? If it is, even though perhaps the ultimate has not as yet been achieved, then we would have one query. If it is not, we would have another query and in either event, the fact that perhaps prior to 1963 it was not, even assuming that for my purpose it would

still have no direct bearing on the present program, plan, acts, unless it was a charge of bad faith, and my understanding is that Mr. Berman doesn't charge bad faith in what it is doing but merely that it is not performing the duty imposed upon it by law. Is that correct, Mr. Berman?

MR. BERMAN: I think that's correct, your Honor, yes; we have no evidence of bad faith, at least in the de jure segregation sense.

MR. SCHNEIDER: Then, your Honor, I fail to see the purpose of this motion at all because if that's the case, we're not talking about severing issues at all. We're merely talking about the order of proof at trial and there is no necessity for a motion. I will concede -- and I think anyone else will concede -- that it's certainly within the

discretion of the Court to direct the order of proof at the trial in any matter.

THE COURT: Mr. Schneider, the only reason for this motion is that there is a very nice person named Raymond Schneider who, insofar as the conference was concerned in chambers, in substance said that in order not to waive any possible right as far as you are concerned -- and this the right of every lawyer -- that you could not or felt you should not stipulate to it as distinquished from, let's say, could not, and therefore the Court directed the motion be made. That's my understanding of the reason for the motion to start with.

MR. SCHNEIDER: Well, perhaps I misunderstand the motion, then, your Honor, because if the motion is merely to

direct the order of proof in a certain fashion as opposed to bifurcating the trial, which was originally suggested, or as is stated in the motion severing issues for the purpose of trial, then I am in a little different position, but he has not asked that you merely direct the order of proof. He has asked that you sever certain issues that he sets forth in his motion, which are not even framed by the pleadings.

THE COURT: Let me suggest to you: it may be my fault because as we discussed it in two separate conferences, I did use at times the word "bifurcation." Actually, all the way through we were discussing -- because we discussed the Court's power to direct the order of proof -- we did use 597 or I think I referred to 597 of the C.C.P. I referred, I'm Positive, to the old 1042

of the C.C.P. which is at the Court's discretion. Now, under the Evidence Code -- I forget the section of it -- all we are talking about, purely and simply, is an order of court directing the order of proof. I tried to make it clear that in my humble opinion -- and pardon my repetition -- there wouldn't appear to be any purpose in spending a great deal of time, at least at the beginning, on the query of any condition existing prior to 1963. To my mind, it was too remote, number one, so long as there wasn't any charge, and there isn't, of bad faith. Our query, therefore, in the order directing the order of proof, is one, what are the, let's call it, the policies of the action being done at the present time.

You may recall we had discussed the fact that mandamus speaks as at the

time of trial, not some years before.

MR. SCHNEIDER: Ordinarily it speaks at the time the petition is filed. However, in this case, we will stipulate it speaks as of the time of the trial.

MR. BERMAN: We haven't stipulated to that.

THE COURT: Well, he may suggest at the time of the filing of the petition of mandamus date, the authority was not performing a duty imposed by law, but by the time it came to trial, they were performing. In my humble opinion, Mr. Schneider, the petitioner could not prevail. He has to prove not merely that five years ago or four years ago or ten years ago or even a year ago the Board or body was not performing a duty imposed by law but he has to prove at the time of the trial they still weren't performing it. That's, from all my research, my

opinion as to mandamus and hence we discussed, you may recall, that undoubtedly by this discovery that you're all going to join in, all it does is the presently existing program, policy, acts under the program, would become apparent.

The query was primarily going to be, therefore, subject to any other evidence if any there be, whether that did or did not constitute a compliance with the duties existing under the decisions of the Supreme Court of the United States, and the courts of California. Hence this entire matter is one of an order directing the order of proof and not any true bifurcation insofar as, oh, what might be called issues, are concerned.

My order directing the order of proof was to be without prejudice to the right of the plaintiff or the defendant

to contend or to move the Court upon its determination, so to speak, of the issues under the order directing proof, to be allowed to introduct evidence before it, because we were not adjudicating at this time that they could not, as such.

What the ruling would be at that time, of course, I think Mr. Berman perhaps knows, subject of course to the query of whether he at that time contends, well, let's call it, bad faith.

The reason I say "Let's call it" is because it's possible that there can be a program in which the actual carrying out of it is so slow that the evidence prior to May '63, might possibly be admissible to show that the reason for the slowness is intentional or deliberate. That might be, I suppose, called a type of bad faith.

But now, having in mind --

MR. SCHNEIDER: In other words, to establish a continuing-course-of-conduct sort of thing. Is this what you're saying?

THE COURT: Yes, possibly, keeping in mind, therefore, Mr. Schneider, that this is solely and only an order directing the order of proof.

MR. SCHNEIDER: Your Honor, I may simplify the whole matter. If all that is being asked for here today is an order directing the order of proof to the effect that no evidence on any issue without setting forth these issues, as he has here, that aren't even framed by the pleadings, that no offer of proof be made on any issue of evidence existing prior to May 1, 1963, without the approval of the Court, I would have no objection to this at all.

MR. BERMAN: Well, your Honor,

actually I'm really quite perplexed by Mr. Schneider's reaction. By and large, the statement of issues paraphrases at least 50 percent or more the way Mr. Schneider himself framed the issues in discussion in chambers but my memory may be not too good on that point. If your honor wishes or thinks it would serve any purpose to make such an order as counsel has stated that he had no objection to, I have no objection to it either.

THE COURT: Let me suggest to you, Mr. Berman, my understanding was that we were going to take one step at a time in the hope, truly, of simplifying, at least, what might be called the issues. One was going to be the order directing the order or time of proof, which is this. Then my understanding was that at some time we were going to, prior to trial, attempt to hold a pretrail

conference in which we were going to define the issues as such and we're not going to try to define it herein.

My understanding -- and pardon my repetition -- is that the only reason, as I say, for this motion was because -- and I agree -- no counsel should waive any rights of any sort at all and therefore the Court should bear the responsibility and this was solely on the order of proof.

With that in mind, Miss Abbott, number one, the Court construes the motion as constituting solely and only a motion for the Court to direct the order of proof, period. The motion is not deemed a motion to define the issues of the cause. The issues are to be defined by a pretrial order expected to be made after a pretrial conference. The motion deemed a motion for an order to

direct the order of proof is granted. The Court orders that the period of time, commencing with the first day of May 1963, and thereafter, is the period to be first heard and tried as to the issues involved; that no evidence as to what otherwise are the issues heren prior to said time need be offered by either party and in the event that either party shall desire so to do, such parties shall make a motion for leave so to do, which will then be passed upon the Court.

That's about it, isn't it?

MR. BERMAN: Yes, sir.

MR. SCHNEIDER: Yes.

THE COURT: Does anybody think we ought to add anything to it?

MR. BERMAN: No, I think that meets Mr. Schneider's objections and --

THE COURT: Do we need any formal order or shall I merely have the

Clerk send everybody a copy of the Minutes?

MR. BERMAN: I would certainly stipulate that a copy of the Minuets would be more than sufficient.

MR. SCHNEIDER: A copy of the Minutes would be fine.

THE COURT: The Clerk shall send a copy of the Minutes to the counsel.

MR. BERMAN: Your Honor, since we're on the record, I might state that since you did propound a question to me of the question of the faith, good, bad or indifferent, of the District, your Honor has admirably summarized the point that the plaintiffs do wish to make, that is to say, that if the case does, on this first issue, go off on the issue of de facto or adventitious segregation, we do reserve the right to introduce evidence

on issues prior to 1963 as they may bear on the issue of de jure segregation or what Judge Skelly Wright called a kind of refurbished separate but equal doctrine, with respect to which historical evidence may well be material.

THE COURT: Let me suggest to you that in my humble opinion, as I visualize it, if you desire to offer evidence which we broadly call, perhaps, bad faith, that offer should be the subject of a motion and it need not be one of those formal motions after we've received evidence from and after 1963.

Let me give you an illustration. Let's assume that the only question involved when it comes, when we get through with the evidence, is one of good faith; that is, they have the right policies, they have the right implementation, but boom, nothing

happens. Then the evidence of prior to May 1 might very well be material.

Assume on the other hand that they have the right policy, they have the right practices, it is going along with reasonable diligence, it's not going as fast as we would love to see it but still, nevertheless, it's reasonable under all of the circumstances, then the evidence prior to May 1, 1963, would, in my humble opinion, have no possible relevancy.

And by the way, I assume that this cause -- it's my assumption, only -- will not be tried prior to the Supreme Court's decision on the case re free choice which is now apparently before it. Free choice in this cause, at least in our prior discussions before you came, did us the courtesy of coming down, seemed to be one of the big queries here

with particular reference to those two high schools, Hamilton and J rdan, the query of th children's right to choose which one they wanted to go between those, both Negroes and Caucasians.

I noticed in the legal newspaper or Law Weekly that the Supreme Court has noted jurisdiction in that cause.

MR. BERMAN: Well, your Honor, we are fighting the five-year statute, which runs sometime in August of 1968. Consequently, I would not like to be in a position where I would represent to the Court that I would be willing to have this case be --

THE COURT: Mr. Berman, let me suggest to you, the Court feels it has an affirmative duty to assist a party in that regard. If it were necessary, if we all think this decision by the United

States Supreme Court may be a very important decision on this cause, I would set it for trial and let you put on a witness just to stop 583 on the five-year period but my first query is from the plaintiffs' standpoint, did you think that decision or do you or don't you think that decision will have a very material query upon this problem?

MR. BERMAN: I'm not prepared to give an opinion of that, Judge. I just don't know. I'm not even familiar with the case. Let me find out about it. My whole orientation now is to get this case on to trial regardless of what the pending cases are before the United States Supreme Court. I think that there are transcendant considerations, both legal and nonlegal, that apply and that this case should be tried.

THE COURT: Then let me make

one suggestion to you. One of the biggest problems in this whole area seems to be, legally, the duty, if any, on the part of the Board to order, compel attendance, so to speak, at schools not the closest geographically, not the one where the student desires to go, but in order to cause a de facto nonsegregation. That's one of our biggest problems. Involved in that problem is the query, therefore, whether the Board has a duty to overrule the free will of the students.

MR. BERMAN: Well, they're doing it now, of course.

THE COURT: Well, how far do they have to go? For instance, let me give you an illustration we discussed at some length, that there were many, many, many children going to Jordan of the Negro race who had no desire to go, as a

matter of fact, unless they were compelled to, would not go to Hamilton; firstly they lived closer to Jordan; secondly they liked it; all those various queries; and the question was -- at least it has always stuck in my mind because not only did we discuss it but I've been assembling a little research file back there -- was there, number one, any free choice at all; number two, how far did the Board have to go if it had to go in overruling free choice.

Unless we start or arrive at either a premise or a conclusion, that to heck with what the kids want to do, it now is purely and simply a constitutionally required duty on the part of the Board, we would be in an entirely different query in viewing the evidence, in weighing the evidence.

MR. BERMAN: May I make this

suggestion, sir: I think that question, the legal significance of that issue as well as the precedental value of any pending case before the United States Supreme Court, might be discussed at the pretrial conference.

THE COURT: Well, the only reason I brought it up is I was hoping -- do you happen to remember the name or recall the name?

MR. SHCNFIDER: Of the case?

THE COURT: Yes. It just went up, by the way.

MR. SCHNEIDER: No.

THE COURT: It was in the Law Weekly two or three issues ago and I was hoping that perhaps you would check that record and not only see if it's material --

MR. SCHNEIDER: This was on a transfer plan.

THE COURT: It was. If I remember it correctly, it wasn't a transfer plan such as we discussed, for instance, here in this clause, where the query was would the children be given free right of choice so that those that wanted to go, who were now in Jordan, to Hamilton, could do so. You may recall we discussed the query of whether that was only the query of whether there was availability of space of whether the school, therefore the Board, would have to say to some of the Caucasians over at Hamilton, "You can't go here; you have to go to Jordan because some of the kids at Jordan want to come over here to Hamilton," and this case, as I read it in the Law Weekly, directly involved that query.

MR. SCHNEIDER: There have been several New York cases that have involved

that point but I don't know of any of them that have gone up to the Supreme Court. There may have been one of those that has been appealed up.

THE COURT: Will you check the one that I'm positive now has gone to the Supreme Court and if my memory is correct, there was an appeal. I was going to say there was a notation of jurisdiction by the Supreme Court but I'm not positive of that particular facet.

MR. SCHNEIDER: Your Honor, I wonder if I might respond, as long as we are on the record, as to something that counsel said just a bit earlier. He referred to de facto segregation and I would like to make it very ultimately clear so there is no mistake on Mr. Berman's part as to what I mean when I say that there is no allegation in this petition or in any of the prior petitions

that there is a de facto segregation existing in this school system and I would certainly oppose any evidence being presented in regard to de facto segregation. What has been alleged here is that the school district is operating a racially segregated school system, racially segregated schools, that its policies regarding transfers, selection of sites and the construction program are for the purpose of increasing and perpetuating racial segregation, not de facto segregation, and I would very definitely make my point on the record at trial to not allow evidence as to de facto situations existing in the school system on the basis of the pleadings that we have at this date.

THE COURT: Let me suggest to you, as I understood it -- and I trust you keep in mind that thus far, because

we've always been, most of the time, off the record, the Court has just merely retained these matters in mind as distinquished from making what might be called formal notes -- my understanding from our last conversation, last conference, was that the query in this cause was whether the school board in its policies, its plans, its acts in carrying out, is or is not conforming to the duty imposed on it by law with references to desegregation of public schools.

MR. SCHNEIDER: Correct.

THE COURT: To that extent, we were not involved in a query nor even a contention that there was in fact de facto segregation. We were involved with the general as distinquished from the specific for the moment. Only if there was now a claim -- and I'm going to use again the phrase "bad faith" -- that

though on paper there was a policy, there were orders made, et cetera, but in fact and truth they weren't being carried out, they were merely a sham and a facade, would we get into a query possibly of de facto, if there is such a thing, because now we come to what we always come to in every cause, the credibility, let's call it, of the acts of the respondent. It's the same thing as when we have a statute or an ordinance which appears to be and is on its face constitutional but is being unconstitutionally applied. That is what I have in mind on that second phase.

MR. SCHNEIDER: Well, I would agree with that, your Honor. I wouldn't determine it de facto. I think we go back to the language. I think itg was Bridge vs. Elliott, one of the earlier cases on racial segregation, where the

court used some very good language and said that, "We will not countenance plans ingenuously or ingeniously contrived to circumvent the law in regard to racial segregation," and I certainly think that is the law under this State and under all the States in this country.

THE COURT: Good language, good description.

We don't really have any dispute, do we, Mr. Berman?

MR. BERMAN: I don't know, your Honor; frankly, I'm puzzled. The pleadings are broad enough in my judgment to cover in the widest terms the status of the segregated conditions in the Los Angeles School District, what the duties of the governing boards are with respect to that, and whether they've been carrying out those duties. If we're going to get hung up on a nice,

semantical distinction between de facto segregation and intentional segregation, then I think that's going to be a serious mistake for all of us. I construe these pleadings -- and there is nothing for your Honor to pass on, I realize, but I have to say for the record -- I construe these pleadings as broad enough to cover all of the issues that I've mentioned and I do not, and I repeat, I do not construe them as limiting the plaintiffs in their proof to proving intentional or de jure segregation but rather they are as broad as they can be.

THE COURT: Let me suggest to you: try to visualize, if you will, the proof of the cause. There would be no need, no sense, truly, to try to prove de facto segregation, merely to try to prove that a duty exists to eliminate it, when we have the first query of what, if any,

policies, implementations, et cetera, the Board has in effect. I seem to differ with Mr. Schneider, apparently, in the law but in my humble and considered opinion, in every cause of mandamus, when it is sought to have a court compel the performance, quote, of a duty especially or specially imposed by law, end quote, it is the present that counts. The Court may not order an alleged duty to be performed if in fact at this time as distinquished from the time when it was filed it was performed. Hence, being in this type of case, not being just a declaratory relief case, Mr. Berman, because we had discussed this at great length with Al Wirin, I visualize therefore the trial and order of proof as: 1. What are the present existing plans, policies, implementations of the Board with reference to the duty existing

on its part re segregation; 2, whether those policies, plans, are in fact being carried out; 3, within that (2), are they being carried out with the haste, with due deliberation, however, which the Supreme Court referred to and which I love to refer to in the query of the alleged administration of justice. You may know, Mr. Berman, that there is -- and I'm not concerned -- great criticism aimed at yours truly because in every trial with a jury I suggest to the jury at the end that the parties are entitled to all the due deliberations that we can give in the hope that there is such a thing as justice and there it is claimed I'm inviting jurors to waste too much time and I don't think you can waste too much time on considering a cause but that is truly the same thing as far as the Board is concerned. Matters such as that

require due deliberation.

On that particular, what I perhaps might call (2a), I visualize of course a possible claim on the part of plaintiff that this is all lip service and in that lip service we would have the very appropriate language repeated by Mr. Schneider on that query. Under that query may come a query that notwithstanding the adoption of plans, policies, that it has, nevertheless there is in fact de facto segregation. This I assume, to try to prove the bad faith, to try to prove the facade, in substance. That is generally how I have analyzed the trial of this cause for the moment and so that honestly, I think that you and Mr. Schneider are in my humble opinion just tilting at windmills insofar as the query is concerned.

Apparently the difference

between myself and yourself and Mr. Schneider is because of my humble opinion as to mandamus, the duty or power of the Court insofar as mandamus is concerned, to wit, the present as distinquished from the past.

MR. SCHNEIDER: I don't think we're that far apart, your Honor. In fact, we stipulated that in, as I pointed out, in the preliminary statement here, that the rights of the petitioners, if any, and the duties of the respondent, if any, shall be determined as of the time of trial so I don't have any argument with that and I certainly don't have any argument with what you said prior to that.

THE COURT: Thank you. Merry Christmas to all of you. Stay well.

I want a copy of the Order also, Miss Abbott.

(Whereupon at 9:30 A.M., the proceedings were concluded.)

APPENDIX E

SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.
PETITIONERS,

VS.

BOARD OF EDUCATION OF THE CITY
OF LOS ANGELES,
RESPONDENT.

MINUTE ORDER OF SUPERIOR COURT JUDGE ALFRED GITELSON, DECEMBER 14, 1967

The Motion of Petitioners for Separate Trial of Severable Issues, (filed November 29, 1967) comes on duly and regularly for trial in this Department 19.

Petitioners appeared by their Counsel, BAYARD F. BERMAN, SOL ROSENTHAL and MICHAEL BERGMAN; A. L. WIRIN, FRED OKRAND, and LAURENCE R. SPERBER; LOREN R. ROTHSCHILD; and EDWARD M. MEDVENE.

Respondent appears by its Counsel, HAROLD W. KENNEDY, County Counsel, Clarence H. Langstaff, Assistant County Counsel, Raymond W. Schneider, by Clarence H. Langstaff, Assistant County Counsel and Raymond W. Schneider, Deputy County Counsel; and by JERRY F. HALVERSON, Legal Adviser, Los Angeles City Board of Education.

The following proceedings are had, and Orders made:

I. The Court construes the Motion as constituting solely and only a Motion for the Court to Direct the Order of Proof. The Motion is not deemed a Motion to Define the issues of that cause. The

issues are to be defined by a Pre-trial Order expected to be made after a Pre-trial conference.

The Motion, deemed a Motion for an Order to Direct the Order of Proof, is granted.

II. The Court Orders that the period of time, commencing with the 1st day of May, 1963, and thereafter, is the period to be first heard and tried as to the issues involved; that no evidence as to what otherwise are the issues herein, prior to said time, need be offered by either party, and in the event that either party shall desire so to do, such party shall make a motion for leave to do so, which will then be passed upon by the Court.

Dated this 14th day of December, 1967

APPENDIX F

SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.
PETITIONERS,

VS.

BOARD OF EDUCATION OF THE CITY
OF LOS ANGELES,
RESPONDENT.

PETITIONERS' MOTION TO BE RELIEVED OF WAIVER OR STIPULATION, IF ANY, RE ISSUE OF RESPONDENT'S BAD FAITH MARCH 21, 1969

Petitioners hereby move the Court for an order providing that if, by reason of any statement heretofore made by their counsel in this cause, petitioners have waived or agreed to

waive, or have stipulated to eliminate from this cause, in whole or in part, their contention set forth below, petitioners shall be relieved of the effect of such waiver, agreement or stipulation. Petitioner's said contention is as follows:

(1) That respondent has knowingly, deliberately and intentionally followed a course of action and inaction which has had the effect, and continues to have the effect, of maintaining and perpetuating a racially segregated and imbalanced school system;

(2) That respondent at all times has had full knowledge that the effect of its said course of action and inaction would be to maintain and perpetuate a racially segregated and imbalanced school system; and

(3) That by reason of the

foregoin, respondent has been guilty of bad faith in not discharging its duties, under state and federal law, to end racial segregation and racial imbalance in its public schools.

Petitioners do not content that respondent, or any individual member of respondent's Board of Education, acted, or failed to act, with pesonal animus or feelings of ill-will toward any ethnic or racial minority group or the pupils of any ethnic or racial minority group.

Dated: March 20, 1969

Respectfully submitted,

BAYARD F. BERMAN
SOL ROSENTHAL
MICHAEL BERGMAN

By: /s/ Bayard F. Berman
Bayard F. Berman
Attorneys for Petitioners

APPENDIX G

IN THE COURT OF OF APPEAL OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.

PETITIONERS-RESPONDENTS,

VS.

BOARD OF EDUCATION OF THE CITY

OF LOS ANGELES,

RESPONDENT-APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF

LOS ANGELES COUNTY

HONORABLE ALFRED GITELSON, JUDGE

REPORTERS' TRANSCRIPT OF APPEAL

Volume 36

Pages 7060-7109

March 24, 1969

LOS ANGELES, CALIFORNIA, MONDAY, MARCH 24, 1969, 9:30 A.M.

THE COURT: The "Reporters' Daily Transcript, March 21st, 1969" will be marked Court's 52 for identification.

Mr. Halverson, we are on the "Petitioners' Motion to be Relieved of Waiver of Stipulation re Issue of Respondent's Bad Faith."

The written motion having been filed March 21st, 1969.

MR. HALVERSON: Thank you, your Honor.

We reviewed this very carefully, your Honor, and I think -- I believe we find ourselves in this position.

As we reconstruct the hearings, I guess we call pretrial hearings, that we held prior to the time the trial commenced, I believe, on the

28th of October, on the triel subsequent thereto, we have operated, I think, under the assumption, and I think correctly so, that we have not been charged with bad faith in the operation of the school system as it affects minorities, at least as far as imbalance or de facto segregation or whatever term we use to refer to the problem is concerned.

We have not been charged with racially discriminating against anybody. If I am in error I would be glad to be corrected, but that is the assumption we had subsequent to, at least, the date of the Minutes, and that date escapes me for the moment, wherein petitioners made the statement referred to Thursday, that is, that he is not charging bad faith, et cetera.

Now, when we read the Petition, petitioners' Petition as Amended, it

appears that -- first of all, it is a well drafted petition and what I have to say -- I don't mean to demean the Petition, but the Petition, I think is subject to a number of interpretations.

At least, it is subject to the interpretation that petitioner are charging or were charging respondent with having maintained what is commonly referred to as a de jure segregated school system.

That is, racial discrimination as we see it.

It is also possible to interpret the Petition that Petitioners are charging defendants or the Respondents not with bad faith, not with discrimination, not with de jure segregation, but having maintained, by reason of inaction or by reason of inappropriate action, what has resulted

in and, in fact, racially imbalanced school system.

Then, of course, it is also possible to interpret the Petition, both ways, or it is charging both; that is to say.

Now, unless I am horribly mistaken, and I could well be -- there's been a lot of water under the bridge in this lawsuit -- the reason that Court and counsel decided that we would not go back in this trial in terms of receiving evidence and argument, and so forth, and so on, prior to May 1, 1963, is that the Petitioners stated that we were not being charged with bad faith.

Now, properly or improperly, we interpreted that, Respondents interpreted that as meaning we were not being charged with racial discrimination; we were not being charged

with maintaining what is commonly referred to as a de jure segregated school system. Okay.

We operated on that premise. We conducted ourselves, in so far as the Petitioner's side of the case is concerned, on that premise; that is, that we were being charged with something other than racial discrimination, something other than de jure segregation.

Whatever that "other," we refer to it as "fortuitous imbalance," but it may be referred to in other ways, I guess.

Now, it appears, really, almost in the middle of Respondent's case in chief and after the Petitioner's case is in, I guess, that the Petitioner is seeking to withdraw his statement that we -- that he, rather, has not charged us with bad faith.

THE COURT: In the sense of personal animus of the Petitioner, he still asserts they are not charging an animus on the part of the Board.

MR. HALVERSON: That's correct. I don't think that gets us anywhere, because I don't think any board has, can, actually have administrative agencies as a state -- or whatever it is, can have any personal animus.

THE COURT: Well, this can be, Mr. Halverson. There can be a board that has a personal vindictiveness, a personal animosity, a personal feeling of ill-will toward either a particular petitioner or group of petitioners.

We can just tkae, for the moment, the violent acts on the part of, let's say, some of the militants.

All you have to do is talk to some people in the streets, so to

speak, and find out what the personal feeling toward it is concerned.

One of the things that is going to hurt, regretfully, in the bond election, in my humble opinion, based upon the guests at our home is the feeling by people otherwise of worth, of intelligence, of education, that they are not about to increase their taxes for those so-and-so's that are destroying property and all the rest, to the extent that I haven't heard for a long time on bond issues for schools.

The distinction between personal animus and what might be called knowing, intentional; doing or not doing of acts which would create bad faith, it is quite distinct and different.

Paragraph VII, for the moment, of Petitioners' Second Amended and Supplemental Petition for Writ of

Mandate alleges:

"Respondent operates, controls, directs and maintains certain elementary, junior high and high schools as racially segregated schools attended predominantly, and in certain cases exclusively, by Caucasian pupils, and a list of certain such raically segregated schools is attached hereto, marked Exhibit B, and by this reference incorporated herein as though fully set forth.

"VIII. Respondent requires and at all times material hereto has required said pupils, except in special cases, to attend racially segregated schools, despite the desire and right of the pupils to attend nonracially segregated public schools.

"IX. Respondent permits and at times material hereto has permitted

certain pupils attending public schools within the District to transfer from one public school to another within the District in such a manner as to maintain and increase instead of alleviate racially segregated conditions in either or both of said schools.

"Such transfers are permitted pursuant respondent's rule and policy allowing Caucasian pupils attending racially balanced schools to transfer out of said schools to schools in which all or substantially all of the pupils are of the transferee's own race.

"Despite respondent's knowledge of such transfers and respondent's knowledge that the effect of such transfer is to maintain and increase instead of alleviate racially segregated conditions in the public schools within the District, respondent has pemitted and

continues to permit such transfers.

"X. Respondent is selecting and at times material hereto, has selectted locations for construction of public schools, which selection results, to the respondent's knowledge, in the maintenance and increase instead of alleviation of the racially segregated conditions in the public schools within the District. Such selections have occurred in the following, among other cases: Alain Locke High School and Crenshaw High School.

"XI. Respondent maintains and determines and at all times material hereto has maintained and determined individual school service areas, which areas to respondent's knowledge perpetuate and increase instead of alleviate racially segregated conditions in the public schools within the

District.

"XII. Respondent is constructing and at times material hereto has constructed public schools and improvements thereof, which construction and improvements have resulted, to respondent's knowledge, in the maintenance and increase instead of alleviation of racially segregated conditions in the public schools within the District. Such construction and improvements have occurred in the following, among other cases: Jordan High School, Sylmar High School, Fremont High School, and James Monroe High School.

"XIII. Respondent is doing and at times material hereto has done certain acts in addition to those specifically set forth in Paragraphs VIII through XII above, which acts, to respondent's

knowledge, maintain and increase instead of alleviate the racially segregated conditions in said public schools. Said acts are not fully known to petitioners at this time and when said acts become known to petitioners, petitioners will request leave of Court to amend their petition herein or to offer proof thereof."

Hence, the question of knowledge, the contention of knowledge, has always not only been alleged, but it is an issue.

The query that they were, therefore, knowingly and had knowledge, and did so intentionally, it has, therefore, been an issue.

The reason the Court had suggested to Mr. Berman making of a formal motion is twofold: number one, of course, to protect your record; number

two, because the Court does feel partially responsible or greatly responsible for the conclusions, perhaps, that have arisen by reason of this query "bad faith."

Originally, though, it occurred in chambers, and I don't know whether there was any transcript or not.

An argument existed, and collquy was had, with reference to whether the trial should or should not go in back of the Ad Hoc Committee Report.

The Court was of the opinion that the Ad Hoc Committee Report was the first, let's call it, concrete beginning of an era in which the Board having requested and there having been appointed a committee, the committee made recommendations concerning the desegregation of the schools.

The query was whether the

Board did or did not thereafter desegregate, in fact.

Certainly, to the Court's mind, prior to 1963, May 20th, there could be a situation of a true good faith belief that, number one --

MR. HALVERSON: Your Honor, I am sorry but I missed the first part of your statement.

THE COURT: That prior to May 20th, 1963 that there could have been on the part of the Board a good faith belief that, number one, we had some sort of a balance, so to speak, in our schools.

Number two, the policy which the Board had had, and had adopted, had led to or was leading to segregation, and that what they did thereafter would -- would or would not be, so to speak, as far as the parties and concerned, designed to and would create balance and

desegregation as distinquished from segregation.

It was the position of the Board that it had in good faith done all within its power from and after the Ad Hoc Committee Report to attempt to desegregate the schools to the extent segregation, if any, existed and create a balance that, in fact, it had not, itself, created a segregation.

It was a fortuitous imbalance that existed as distinquished from a segregation in which there would be any governmental board or involvement, so to speak, in the creation or perpetuation of conditions which existed.

Hence, counsel went along with the Court's suggestion. Subject, however, to the right to, if it is believed necessary or important, for petitioner to move the Court for leave to

go prior, that is, to introduce evidence existing prior to May 20th, 1963.

In my humble, considered opinion, it still is my opinion that the evidence prior to May 20th, 1963 would not be truly material, nor relevant, in that what was done prior to that time presents a different question both of fact, of knowledge, so to speak, of conditions, than have existed from and after 1963, the Ad Hoc Committee Report.

Starting with the premise that the Board had caused the report to be studied, and the subject to be studied, and the report made for the purpose of and with the intent, in good faith, of attempting to create the imbalance and the segregation, if any, which exists in our schools.

Now, the query is, therefore, shall the petitioner be

hindered in any way by the query as to the construction, that is what it amounts to, of the evidence from and after May 20th, 1963 with reference to the query that when the Board did or allowed to be done with full knowledge of facts existing, act or acts which either perpetuated or created a further imbalance or segregation, that the failure to act thereon with the full knowledge, not only of the facts but of the result of those facts, would create, in fact, bad faith.

Not motivated, however, by any personal animus or feelings of ill will, and not animated or motivated by a personal feeling of segregation.

There is no charge that the Board are segregationists; that they are deliberately, so to speak, in that regard acting for the purpose of acting

to do the best they can do to create and keep existent segregation.

The query --

MR. HALVERSON: On that point, your Honor, I don't mean to interrupt you, but I don't understand it that way.

Excuse me, but I just wanted to point that out.

THE COURT: Well, there again we come to this distinction.

When we say that there is no charge of individual bad faith on the part of the Board, it means; as I understand it, that there is no personal animus on the part of the Board towards the minorities.

So that what they are doing is not by reason of a failure, omission, to create that which existed by the doing or nondoing of acts which continued to cause segregation, which is

now one facet, so to speak, but it has not been done.

That is, there is no charge that the Board, based upon a personal construction that segregation is to be desired, is doing what they are doing either as subterfuges for, or create that consummation of that personal animus; that personal segregation philosophy or intent or objective on their part.

Rather, that what they have done or are doing, in fact, create segregation, was done knowingly, with knowledge of the fact and, therefore, not in good faith.

That is, they have not done what the law required them to do, to eliminate segregation, let's call it, from a negligence, a failure to exercise that care, that skill, that knowledge

which alleged specialists possessing experitse of the Board of Education should have done to create a balance as distinquished from allowing a continuance of aggravation of segregation.

In my humble considered opinion, if Petitioners did not make that motion, the Court would find itself in the position where f it were to find that the Board by virtue of its various departments had knowledge, for instance, when it realigned boundaries that the realignment of those boundaries would either create more segregation, or at least would not tend to eliminate segregation, did they do it knowingly, intentionally, with knowledge of the type of persons, so to speak, that they are; that the result would be segregation, and to that extent was it; therefore, in bad faith.

Bad faith in that they did not take affirmative steps to create the desegregation.

They did not take affirmative steps which must necessarily and reasonbly result in balance.

Though I do believe that the Court would find itself in a position where it could, let's say, find facts but might find itself in a position where it can't make the ultimate finding which may or may not have an effect upon, let's call it, time involved.

One of the queries now or cause is when, as, and if we come to a decision, assuming for the moment the Court's decision were on behalf of plaintiff, a writ, what time would be reasonably required generally.

Assuming for the moment that the Court was to find that there was

segregation, in fact, that there was governmental involvement to the extent the children were required by the Board to reregister at a school already segregated; they were creating further segregation or continuance of segregation.

That would be a different situation than if the Court were to find that even though the Board had exercised all of the good faith which reasonable men could exercise, nevertheless by virtue of the shifting populations, plus the location in which the schools exist, the Board was powerless to do any more than it did.

But the law requird; however, let's assume, to do mor than they were doing and, therefore, because they were such nice people and in such high good faith, having done everything

that they could, the Court should impose no limitations, so to speak, upon the time in which segregation -- desegregation was to be created.

Now, that is a different situation than if the Court were to find, let's assume, from 1963 on that the Board, with full knowledge of what was being done, the effect of what was being done, the fact that the policies created or perpetuated further segregation, that the Board has been expending its funds in manner or means so as to create a believed higher educational output, but only for those who were advantaged as distinguished from those who were disadvantaged that; therefore, the Board has not been exercising that good faith, that diligence, which the law required it to exercise.

Its failure to exercise

that good faith, the converse must necessarily be bad faith.

That, therefore, the Court should order in its peremptory writ of mandate the actual doing, with all due speed and diligence.

The actual taking of steps with all due speed and diligence.

Perhaps even with time limitations for its reports, the creating of segregation --

MR. HALVERSON: Desegregation.

THE COURT: Desegregation. Thank you.

There is a difference, for the moment, between a knowing, intentional doing or nondoing of an act which is a form of bad faith as distinquished from the knowing, intentional doing of an act to the extent, as to speak, of one's ability,

particularly when one is a trustee obligated to exercise the highest of good faith, in which by virtue of facts beyond the control of this trustee, it has been unable to do more.

In the light of that, let's call it, analysis, which became more and more apparent to me as the case was continuing, starting, frankly, with the respondent's defense, so to speak, and the reason I say "starting with the respondent's defense," throughout the entire of petitioners' proceedings, this Court, because this Court believes that as a matter of law the respondents were entitled to it, was indulging all the way through in the disputable presumption of the Board's acting in good faith, based upon what knowledge it had as to the facts, and with that knowledge, doing whatever it could reasonably do to cause

a greater balance, to cause a greater desegregation which must, inevitably, within some period of time, hopefully reasonable, result in a balancing of the schools and elimination to the extent possible in all of the schools of desegregation, though you might have one of two schools where that could be possible.

MR. HALVERSON: In that case, segregation.

The elimination of segregation.

THE COURT: Then, as the evidence starts coming in on the part of respondents, the Court finds itself, of course, faced with the query of knowledge on the part of the Board.

What knowledge did it have?

Our first witness, with

reference to the Board in the question of knowledge, was Mr. Owens.

His department was charged with the duty of assembling generally the ehtnic data involved in a realignment of boundaries.

MR. HALVERSON: And other responsibilities, your Honor, in regard to the assembling of data, demographic data.

THE COURT: Correct, I know.

But part of his duty was the assembling of ethnic data with reference to the effect of boundary changes.

MR. HALVERSON: Yes.

THE COURT: Attendance areas.

MR. HALVERSON: Yes.

THE COURT: Which were presented to his superiors, which were presented in graphic form, demonstrative

form, to the Board to the extent that he knew, his department was the only department that had that duty, that he was never instructed, never directed to so line up attendance area boundaries so as to create affirmatively a desegregation other than a better balance to consider the pooling of schools or the grouping of schools or any other coupling of schools for the purpose of creating a desegregation, for the purpoe of even creating a better balance as such.

That his figures in analysis were presented even directly to the Board, or committee of the Board, by in person.

That it went up through the high chain of command, from him to his superior, immediate superior, the assistant superintendent to the Superintendent to the Board.

So that there was actual knowledge on the part of the District of, one, the facts that existed; two, what or what not was being achieved by the realignment of boundaries, none of which were, in fact, created for the purpose of creating a balance because they could not have mathematically created a balance, and because they could not have mathematically, as we realign, have created a balance, it must be the converse, that they were allowed to be done in that manner for reasons other than creating of balances, such as the query of overcrowding, purely and simply, but with a knowledge that they did not tend to, that they would not create a desegregation.

And the query of it being done intentionally; and, therefore, the query of what might be called to that

extent bad faith.

I think it is involved, I think that the Court, to the extent that the Court caused what might be called -- now called the confusion in the nuance of the words "bad faith," legally speaking, that it has got to be corrected as far as the record is concerned, and as far as both parties are concerned.

Hence, assuming for the moment that the Court is going to grant this motion, the Court will exercise great liberality of somehow, some way, if you were to feel, Mr. Halverson, there was evidence prior to 1963 which would prove a different course of action on the part of the Board that it did subsequent to 1963; that the conditions prior to 1963 were so bad, so horrendous, that the Court must conclude that after 1963, the Board has truly been in good faith

because of the fantastic condition with which it found itself based -- that's possible, there can be a good faith when a condition is so bad that a person was exercising care, skill, knowledge, attention, diligence; it is still bad but not as bad as it was before.

That somehow, some way what he did therefore was truly motivated by this good faith.

I can only suggest, in my humble considered opinion, the rule of trusteeship, to wit: that a trustee is bound to act in the highest of good faith toward his beneficiaries, applies to every governmental agency having the power over the subjects, so to speak, to exercise or make available or to restrict, or to grant the rights that its subjects are entitled to.

In my humble opinion, the

failure to exercise that highest degree of good faith, though in law has at times been called fraud --

MR. HALVERSON: That's right. The words are almost synonymous.

THE COURT: -- it is generally -- I don't quite agree with you, Mr. Halverson.

-- it is generally equated with bad faith. The fraud portion, if I might suggest to you, in trust, true trust, comes in when the trustee has on top of the failure to exercise the highest degree of good faith, obtained a personal advantage of some sort.

Now we have a fraud. I don't think we have a fraud until that trustee has obtained a personal advantage.

MR. HALVERSON: Of course, we can't make that analogy in this case at

all, your Honor.

THE COURT: Well, we could. Let me show you how we could if the facts wee such.

Assume for the moment that the facts wee to prove that the Board had taken X-number of schools on the west side. They were 99.9 percent white. Everything the Board did tended to protect that 99.9 white.

The Board did nothing which would in any manner affect that 99.9.

The Board is all white.

MR. HALVERSON: The Board is not.

THE COURT: I am giving you a supposition, example.

You made the suggestion that there couldn't be --

MR. HALVERSON: Oh, I see.

THE COURT: -- a difference between this bad faith and fraud.

MR. HALVERSON: We have a Negro and a Mexican-American on the Board.

THE COURT: I am trying to give you an example where you could have a fraud on the part of the Board with reference to your query involved, where the Board would be getting in substance a personal benefit or advantage.

In my supposition, or illustration, every member of the Board's children went to these white schools, none went to the other schools.

MR. HALVERSON: I see.

THE COURT: It is my understanding of the law, Mr. Halverson, with reference to fiduciary relationships, which is perhaps just as good a word as the trustee relationship, that a violation of the fiduciary duty is

generally bad faith as distinquished from fraud, unless the fiduciary has obtained a personal advantage, in which event, then, we have truly a case of fraud.

In that later case of fraud, if a fiduciary relationship exists, you don't have to prove personal animus, but you have to prove such facts that would give rise to the conclusion of bad faith.

MR. HALVERSON: Personal animus is irrelvant, as far as I am aware --

THE COURT: It generally is.

MR. HALVERSON: Yes.

THE COURT: But keeping in mind that a personal animus would allow a removal without question of a trustee by a court, fraud would allow removal by a court.

The bad faith may or may not allow a removal, because we always

have the query as to, let's call it, the degree of the bad faith.

It is possible, for instance, that this is not one of the defenses asserted by the Board herein.

It would have been possible for the Board to have taken the position that it performed its duty to the extent that it knew its duty to exist, and that was what Mr. Schneider was striving for on the query of fortuitous imbalance.

In my humble opinion, from an analysis of all of the cases, I think there could be such a thing as fortuitous imbalance.

The query he was somewhat motivated from and after the Ad Hoc Committee report, and, of course, the Board is charged with knowledge of all the cases. I am not a great believer in

that disputable presumption; that a person is charged with the knowledge of the law to the extent that we lawyers generally hope we may know the law, in that I think it is an awful lot to expect that everybody would agree upon the law in the same sense and the same meaning.

And yet, again, to me, there is a distinction between bad faith and that intentional, deliberate disregard of the law, knowing it, for some advantage; so to speak, on the part of the Board.

How you can be prejudiced -- I was thinking about it over the weekend -- I frankly don't know, but, of course, that doesn't prove anything.

It seems to me, that to the extent that somehow, some way, the Board has not presented evidence which otherwise it could present, keeping n

mind this case is still going on, certainly the Board's theory, so to speak, could not have been altered, but assuming it were; then, of course, it would be of notice and knowledge and should have the opportunity of meeting -- again we are talking from and after '63, unless you believe prior to '63 bears on that -- and hence, it became my tentative conclusion over the weekend that upon the granting of the motion, if a continuance at some point is required by you in order to be able to prepare any other further additional evidence, the Court would grant a continuance of the trial itself at the point where you have proceeded as far as you can proceed, so to speak.

MR. HALVERSON: I apprciate that, your Honor.

THE COURT: I think it would be unfair to the Petitioners if the Court

were to deny the motion.

I can't see how it is unfair to the Board to the extent that what it charges is that what the Board did or didn't do was done knowingly and intentionally, knowing that it was a perpetuation of, or even a creation of a segregation, or a creation or a worse segregation.

In face, or in effect, that it did not do it from an ignorance of either facts or law, particularly facts, and therefore, as was a violation of a duty, the converse is bad faith.

As I say, I couldn't figure out, and you may be able to show me, how the Board is at all prejudiced, particularly in light of the willingness, if not desire, but if there is the slightest question on the part of the Board of it being unprepared, of needing

additional time, or an opportunity to present other additional evidence that it should be and will be granted.

Now, you go from there and tell me how you would be prejudiced.

MR. HALVERSON: Thank you.

Well, first of all, if I may, I would like to get, perhaps, a better understanding of what the Petitioners are saying here or asking to be relieved from, if the Court please.

And just a couple of, perhaps, isolated points or questions, or observations, but all of which go to my understanding of what the Petition is about.

If I understand your Honor's obersvations, and I may not -- but I think I do -- your Honor is reading the words "personal animus" on line 15 of page 2 of Petitioner's motion as

basically synonymous with racial prejudice and saying that the Board is not being charged racially -- not being charged with animus, and therefore not being charged with racial prejudice.

THE COURT: Individual racial prejudice.

MR. HALVERSON: Yes.

THE COURT: That is, the Board as a whole.

MR. HALVERSON: The Board as a whole.

THE COURT: Yes, because we are talking about the Board, that the members of the Board, and therefore the Board is not being charged with a personal vindictiveness, bad feeling toward the minority as distinquished from intentional doing of what was done.

MR. HALVERSON: Yes. Well, this is what I understood your Honor to

say.

To restate it, if I understand your Honor correctly, your Honor interprets the phrase "personal animus" in Petitioner's motion, line 15 thereof -- and I suppose also the phrase "or feelings of ill will toward any ethnic minority group," as being essentially synonymous with racial prejudice and, therefore, it is your Honor's interpretation that Petitioner are not charging Respondents with racial prejudice.

Is that a correct understanding?

THE COURT: That's right in the sense that we talk of racial prejudice.

MR. HALVERSON: Yes. I believe I understand that. Now, one other observation the Court made that bears, I think, directly on some of the things the

Petitioners said, I think Wednesday or Thursday of last week, and also did state in their Answers to the Interrogatories as reflected, actually, in the motion here, and that refers to the phrase -- and I may not be quoting your Honor correctly -- that the actual result thereof would be, with respec to the action or inaction of the Board of Education, which therefore allegedly results in "segregated and imbalanced school system" -- does your Honor equate that kind of a phrase with the phrase "for the purpose of resulting in a racially segregated and imbalanced school system"?

MR. BERMAN: I am not sure I understand the question Mr. Halverson is posing.

MR. HALVERSON: Yes, I probably am not making it very clear.

MR. BERMAN: I reduced this to writing so there would be no mistake of what we are going to be relieved of.

MR. HALVERSON: Well, it is not your problem, it is my problem, Mr. Berman.

MR. BERMAN: I am just trying to get and understanding.

THE COURT: Were you reading from?

MR. HALVERSON: Yes, your Honor, it is with respect to the Motion, line -- let's see, I believe it is on page 1, line 32.

It says, number one:

"That respondent has knowingly, deliberately and intentionally followeed a course of action and inaction which has the efect," et cetera, "of maintaining and perpetuating a racially segregated and imbalanced school system."

Then it goes on on line 5 on page 2.

THE COURT: That is paragraph 2.

MR. HALVERSON: Yes, sir.

Immediately following:

"That respondent has at all times had full knowledge that the effect of said course of action and inaction would be to maintain and perpetuate a racially segregated school system."

Then, of course, in paragraph 3 on line 9 there is a conclusion drawn.

Now, if I understood your Honor correctly, during the course of these comments I believe your Honor was sort of summing up or paraphrasing what the petitioner was saying therein.

I wrote down some words

which may not accurately reflect what your Honor said in a quotation basis, but it was pretty close to it.

Those words are that the actual result thereof would be, that is with reference to the actions that the respondents took, that is, they took these actions knowingly or knowing what the actual result thereof would be.

Now, I am wondering, is this the petitioner saying that or are they saying that the respondents took the actions "for the purpose of," quoting your document, "maintaining and perpetuating a racially imbalanced school system."

THE COURT: He is not saying "by reason of," and "as a result of."

That, by the way, is very consistent with Mr. Berman's statement on Thursday, December 14th, 1967, in Court's

2-A for identification at page 4.

MR. HALVERSON: Your Honor, could I have that date again?

THE COURT: Yes, December 14th, 1967 in Court's Exhibit 2-A for identification.

I will start at page 7.

This is first the Court speaking.

"THE COURT: And my understanding is that Mr. Berman doesn't charge bad faith in what it is doing, but merely that it is not peforming the duty imposed upon it by law.

"Is that correct, Mr. Berman?

"MR. BERMAN: I think that is correct, your Honor.

"Yes, we have no evidence of bad faith. At least, in the de jure segregation sense."

MR. HALVERSON: Is that still

his position, your Honor?

I didn't understand it still to be his position.

THE COURT: Well, my understanding, for the moment, is that Mr. Berman, and he will speak for himself, to the extent that the Board, by way of illustration, requires students to attend a segregated school, the students being of the minority, the Board knowing that it is a segregated school in its composition, at least not desegregated, there is a contention that that is governmental involvement, and to that extent is either de jure or de facto where government involvement is involved as distinquished from a fortuitous imbalance.

That is why I discussed with you the other day the possibility that there may be a de jure segregation,

which is created by statute.

Now, every one of the cases where we have de jure segregation has not been by statute.

MR. HALVERSON: That is not correct, your Honor.

I beg your pardon for interrupting you and disagreeing with your Honor.

There are cases where there has been de jure segregation and the courts have found that the de jure segregation has been by reason of design rather than statute.

THE COURT: Where you had a creation, aside from statute, of a policy of the Board for the purpose of creating segregation.

MR. HALVERSON: Yes, sir.

THE COURT: De jure.

You can have de facto

where there was governmental involvement, where there wsa not in the first instance the design to intentionally, deliberately, create the segregation, and where it is not a subterfuge, that could be a de facto.

MR. HALVERSON: Yes.

THE COURT: And that is being contended for herein to the extent, if it be the law, that the continued requirement of the Board, for instance, to attend a segregated school creates a de jure segregation, nothing more.

To that extent Mr. Berman has been asserting it.

MR. HALVERSON: We understood that, your Honor.

THE COURT: But not as a subterfuge of an intentional design and plan to create segregation.

Hence, in a way, I think

he is still consistent with his statement on page 4, line 12 of the transcript -- let me make one more suggestion to you.

MR. HALVERSON: Your Honor, before you leave that one point --

THE COURT: Yes.

MR. HALVERSON: -- I agree with you. I haven't heard, myself, any assertion that we have done these things for the purpose of creating segregation.

However, I believe I have heard Petitioner, and I believe I read in the motion his contention that we have done these things to maintain segregation, for the purpose of maintaining segregation.

I don't draw a distinction, your Honor. I think both of them are equally reprehensible, to create or to maintain.

I think they are both

reprehensible.

THE COURT: I don't quite agree with you.

Paragraph II, the Respondent had full knowledge that the effect of its said course of action and inaction would be to effect and perpetuate a racially-imbalanced school system.

That is a different charge; that would say in substance that the Respondent for the purpose of maintaining and perpetuating a racially-imbalanced and segregated school system did what it did do with full knowledge of its effect.

MR. HALVERSON: That is what I want to have straightened out, your Honor.

I appreciate that.

THE COURT: Is not my statement

a correct statement as far as your position is concerned, Mr. Berman?

MR. BERMAN: This last one, your Honor?

THE COURT: No, in this last one I was drawing a distinction between the way your motion is phrased and what could have been, so to speak, a charge, a direct charge of what it was doing was for the purpose of creating and maintaining a segregated school system.

MR. BERMAN: Yes.

THE COURT: There being a distinction between the two.

MR. BERMAN: Yes, there is.

There is a distinction, and if we focus on what was the historical pattern of racial segregation south of the Mason-Dixon for a long period of time prior to Brown, we note that distinction.

There, by statute, by local ordinance, and written rule of boards of education, by practice followed by administrators, the rule was followed that irrespective of where he lived, the black child must go to a black school and the white child must go to a white school.

Now, that is the classic time dishonored definition of de jure segregation.

When I, throughout -- from time to time when this question came up, I disclaimed a charge of bad faith. It was in that sense.

I still am not charging the classic kind of de jure segregation.

Consequently, I think his Honor has correctly stated our position. I trust, your Honor, that my -- the statement I am making now is consistent

with what the Court understands the distinction to be.

THE COURT: That is my understanding of your position.

MR. BERMAN: But I want to make further the point, and I want to make it to my friends representing the Respondent, that every allegation of fact that is reflected by that motion has been stated and restated, and has been before you gentlemen from the -- from our inception into the case, and by "our," I mean my colleagues, Mr. Berman and Mr. Rosenthal and myself; that it is in the Second Amended and Supplemental Petition or Writ for Mandate, all of the allegations that our Answers to your Interrogatories state and restate the same facts.

Now, the tab --

MR. HALVERSON: They are not

facts, but --

MR. BERMAN: It is a tag --

MR. HALVERON: Facts. I said they are not facts.

MR. BERMAN: They are allegations of fact.

MR. HALVERSON: All right.

MR. BERMAN: All of the allegations of fact in that two-page motion have been previously made and stated and restated in Answers to Interrogatories, in my opening statement, in all of the colloquy that we have had.

It has only been, as the Court properly put it, "nuances" of the tag, conclusions, "good faith" or "bad faith" about which there has been some confusion.

Now, I suggest to you that you cannot claim surprise.

You cannot claim that you

didn't have a chance to prepare for this pont, because I submit to you that in putting forth one of your alternative positions in your plea of confession and avoidance, namely, that the District has done everything humanly possible to integrate within the financial limits, and within the limitations of good educational policy, implicitly it is your position that they have acted in the highest good faith.

Every piece of evidence that you are preparing and have prepared, and are bringing forward, addresses itself to that, so that I think in all repect that there is more wounded feelings than legal position behind your opposition to this motion.

MR. HALVERSON: No wounded feelings.

It has nothing to do with

wounded feelings.

If the motion doesn't mean anything, and we have always been operating on the basis that this issue of bad faith didn't mean anything, and it was in the record for no particular purpose, and that the motion now doesn't accomplish anything --

MR. BERMAN: I didn't say it didn't mean anything.

It is a conclusion of law, the facts of which have always been before the Court.

MR. HALVERSON: Yes, but that conclusion was one that was expressly negative by you at the outset of this trial.

MR. BERMAN: It was negative in the narrow sense in which his Honor read from the record.

I must say --

MR. HALVERSON: Well, for whatever sense, it was negative.

MR. BERMAN: I must say it comes with ill grace from your side of the table to make such a determined effor to resist this motion, given the fact that from time to time you have been given countless opportunities to refine and define and state and restate and characterize and recharacterize the position of your Board.

The most recent attempt came in bringing in that last exhibit.

It seems to me that in taking the stand you are with respect to the petitioners' attempt to more accurately define their position, you are not giving us the same opportunity that you have had.

THE COURT: Well, on that latter point --

MR. HALVERSON: Your Honor, I can't agree with that last statement.

THE COURT: The latter point doesn't enter into the question at all.

Either the petitioner is entitled to be relieved of the waiver or not.

I might state, number two, so you can address yourself to it, Mr. Halverson, that the Court, as you know, has the power to accept a stipulation and, hence, the second facet of this motion is one, so you might address yourself to it, where the Court intends to affirmatively, aside from the query of granting this motion, reject any stipulations, if any there were, with reference to the query of bad faith, in the sense that I have been discussing it which, as you know, is not a charge of an intentional creation, deliberately

designed to create or perpetuate a de jure segregation, but rather in the sense that the failure to do or the omission to do that which they did or did not do, having notice and knowledge of the facts and charged as learned and educated and intelligent people, that the necessary result therefrom constituting a breach of duty.

If it does at all constitutes bad faith, it is in that sense.

So that we truly have, therefore, the two situations: number one, the motion before you; number two, the statement of intention by the Court to reject the stipulation, if there was any such stipulation in the first instance.

MR. HALVERSON: Your Honor, I would like to make just a very, very

brief rebuttal to counsel's last comment.

The respondent in this action has never refined anything, has never developed anything except at the request of the Court or counsel.

The respondent has never developed anything for the purpose of this lawsuit, in the sense that it was trying to put itself in a better position than it might otherwise be.

This respondent has been absolutely wide open in presenting every fact, and every situation to this Court.

I am not sure which exhibit Mr. Berman has reference to, but if he has any question with respect to the efficacy or validity or honesty of any exhibit that we have ever offered, as to whether it was sharpened for any particular point or not, then I invite him to take whatever steps he may feel

appropriate in terms of going into our records, using any kind of experts he wants to use to get at whatever facts he feels are being left out.

We have never sharpened anything for this case.

I think the record, in fact, is abundantly clear that we have brought in material that probably isn't to our advantage.

THE COURT: Well, Mr. Halverson, you must know by now, and you have been a lawyer a long time, that one of the things we are required to have as a lawyer is a thick skin rather than a thin skin.

It is part of the advocacy, in my humble, considered opinion, and I love advocacy, to at times charge what might be called a denial on one side to be as gracious to the other

side as it has been to the other.

Sometimes it is very effective before a jury, in particular.

As far as this Court is concerned, and I have suggested to you before that I like lawyers, I love a well-tried lawsuit, well-prepared lawsuit, and we are having one.

I think it is understandable that once in a while one of your fellow ought to blow your top a little bit.

MR. BERMAN: That is what it amounted to.

THE COURT: The last lawsuit I tried, which lasted a number of weeks, before the Judge I like very well, although I didn't know him before.

Every day at 4:00 o'clock after the first three or four days, the Judge would look at me and say, "Are you

going to blow?"

I would generally be ready to blow about 4:00 o'clock in the afternoon.

He cured me of it a little bit.

Russell Waite, a very nice person.

MR. HALVERSON: I got my feathers ruffled a little bit.

MR. BERMAN: I apologize for that. I wasn't charging bad faith, if you will pardon the expression.

MR. HALVERSON: I think I understand your Honor's interpretation of the motion, the thrust of it.

We do feel the issue of personal animus is wholly irrelevant.

About the only thing it could go to is motive, and motive is irrelevant in this case, in our judgment.

THE COURT: It is.

MR. HALVERSON: Yes.

We do feel, however, that it does change, even if every so slightly, the thrust of the lawsuit.

It does, as your Honor observed, provide an opportunity for a finding to be made which might not otherwise be made.

It, in our judgment, does put a burden upon us to come in with some slightly different kind of evidence, and which is not cumulative and which, in my present thinking, would take very little time to offer to the Court.

Essentially, what I am thinking about here, is the issue of attendance boundaries, not going through a lot of files, or things like that, but perhaps we could establish by way of overlays the nature of attendance

boundaries and the nature of the influx of Negroes, Mexican-Americans and other minorities, perhaps, into the Los Angeles metropolitan areas over the years.

Then if we start in '63, as your Honor stated, with a situation which is extremely difficult to deal with -- we started in '54 with a situation that was extremely difficult to deal with, because there's very little, I think, which the School District is being charged with prior to '54 -- and if show the situation that confronted the School District, say, in 1940 -- just pick that year -- 1950, and there is a gas tax survey in 1955, as I recall, which results in demographic data, census in 1960.

I think we could, without spending more than one hour, I think we could show the Court the demographic

situation confronting the Board in 1954 and 1963.

THE COURT: Let me tell you what the Court would be most interested in, but I am going to give you, as I told you, every opportunity to present any additional evidence you think may be relevant prior to 1963.

I start with this beginning point.

What existed in 1963 with references to the racial composition, the Ad Hoc Committee Report?

The query: What did the Board do thereafter, and what did it not do thereafter, for the purpose of design, intended to create, if it could be created, an ethnic balance?

Hence, knowledge of the Board becomes very important, knowledge as to facts existing school-by-school,

district-by-district.

The intent with which plans were evolved becomes important, because we know the best laid plans of men and mice go awry at times, but at least if they are designed in the first instance, nothing intentional, to create the objective of balance, everything which would show, one, an awareness on the part of the Board of an imbalance with which it is charged, and therefore the doing of those things which, in its expertise, knowledge, information, ability, were designed and intended to create a balance where imbalance otherwise existed, all of that is very important.

Another part that is very important, therefore, is where did it not do something that it could have done? Why?

Was it because it was advised that the detriments were greater than the benefits?

And I don't know what detriments, so to speak, for the moment, I am encompassing.

Thus far, the Board on that latter facet seems to be predicating its position upon the theory that it did not do what it could have done, omitted to do what it didn't do, knowingly, intentionally, deliberately because of its belief or feeling that monetarily, it should continue to expend its funds for a greater educational output, input, either way you want to describe it.

Involved in that latter position is twofold, two subjects; one is what might be called mandatory disbursements, and the other are optional.

When I say "optional," up to the judgment of the Board.

The position that is mandatory, first, we have statutory mandatory, and then we have what might be called the rudimentary elements of education as being mandatory.

Certainly the Board must first give to all children the rudiments of education.

Then we come to that portion now that's left, which might be called the discretionary or optional expenditures, which we have discussed at great length.

That type of evidence, of course, in my humble opinion is important.

if there is an educationally justifiable basis of the nondoing, such as, the nonconsolidation

of attendance areas, the nonpooling, the nongrouping of schools to create a balance, the Court believes it is very important or material and would like to receive it.

I don't think fears such as -- and this is just my own opinion -- that the whites will run from our district which we discussed one day --

MR. HALVERSON: Yes, sir.

THE COURT: -- can truly be a justification unless somehow, some way, some sociologist is going to testify from his actual studies that the entire of the whites will run from Southern California and no whites from the United States will take their place.

I don't know whether legally that could possibly constitute a justification.

MR. HALVERSON: Apparently it

happened in Manhattan, your Honor.

THE COURT: It may have.

But let me only suggest to you, I know of nothing in our Constitution, whether it is equal educational opportunity or whether it be any other rights of due process, that otherwise said, that these whites shall only exist in those areas where the whites are willing to live, where the whites are the majority, and where the whites are in control.

I never even in, history -- and I once upon a time read and have Elliot's debates of constitutional invention, I have got a nice copy at home -- where that was the intent or purpose of either the Fifth, First, or Fourteenth.

MR. HALVERSON: Our contention isn't phrased quite the way your Honor

has made it.

THE COURT: I know that. I am merely pointing that out as being a legal proposition.

MR. HALVERSON: We haven't asserted precisely that proposition.

THE COURT: Well, to the extent, Mr. Halverson, you know the one thing that exists in the law game, we have the ability to work on a matter or matters, and still unconsciously carry around other matters with us in our head.

That is the wonderful thing known as the alleged brain. Seemingly it keeps on working on these matters we store away, and works on them all the time, where consciously we are working on something else.

And, of course, that is one of the greatest things that makes the law to me so very fascinating.

Hence, I have been working on it to the extent that you were contending the other day, that the whites would flee from this jurisdiction if there were such a thing as an integrated educational program put in, truly integrated to the extent it could be --

MR. HALVERSON: Well, your Honor, I did not want to interrupt you, but that is not precisely what we said.

But, go ahead. Excuse me.

THE COURT: It was with reference to, you may recall, the whites would not send their children to the schools that you now made integrated, and they will move to the West Valley or otherwise and, of course, if we had to throughout, in the entire District, there would be no place for them to move.

MR. HALVERSON: We are talking about the peripheries, just on the

periphery.

THE COURT: Assuming that, for the moment, the ultimate carrying out of that contention, because no principle of law is any good unless carried to its utmost extent and still constant, would by that somehow, some way, constitutional rights, constitutional duties only existed when the result which may occur is enjoyable to the majority, enjoyable in our case to the whites of the area, to the extent that they would be willing to cooperate therein.

That is a pretty tough position when carried to its ultimate end.

MR. HALVERSON: That's right. It is not our position. I don't mean to be contentious.

THE COURT: That is okay.

Let me suggest to you, I

believe a lawyer should always believe, a good lawyer, that he is always right and the court is always wrong.

That is what makes a good trial lawyer, because that gives us the stamina to take a licking and come back and take another one, if necessary, or keep on persisting in what we believe to be right.

So don't be concerned about whether you are contentious or not. That is entirely immaterial.

If a judge is going to prevent lawyers from asserting what they contend, I think we truly have a denial of procedural due process.

You will have a chance to argue further about that contention of yours if you integrate the people are going to leave.

MR. HALVERSON: Thank you, your

Honor.

THE COURT: Miss Abbot, first, the "Petitioner's Motion to be Relieved of Waiver or Stipulation," if any, "re Issue of Respondent's Bad Faith," filed March 21, 1969, is granted.

Secondly, to the extent, if any, that there were any stipulations heretofore, having for its purpose or intent to withdraw as an issue in this case the nature of the acts or omissions on the part of respondent as being either in good faith or bad faith, either way, the Court rejects and refuses to accept the proferred stipulation.

And if it did heretofore accept any such stipulation, it now, on its own motion, vacates the order accepting it.

You will please set it forth in the Minutes.

APPENDIX H

SUPERIOR COURT OF THE STATE OF

CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.

PETITIONERS,

VS.

BOARD OF EDUCATION OF THE CITY

OF LOS ANGELES,

RESPONDENT.

MINUTE ORDER OF SUPERIOR COURT JUDGE ALFRED GITELSON, MARCH 24, 1969

Trial, continued from March 21, 1969, is resumed, with Counsel present as before.

The following proceedings are had, and Orders made:

I. Petitioner's "MOTION TO BE RELIEVED OF WAIVER OR STIPULATION, IF ANY, RE ISSUE OF RESPONDENT'S BAD FAITH" (filed March 21, 1969) comes on duly and regularly to be heard.

Argument having been had, the Court considering all thereof, it is

ORDERED:

I.1 The Motion is granted; and

I.2 The Stipulations, if any heretofore, purporting to withdraw as an issue in this case, the good or bad faith of Respondent, from and after May 23, 1963 (the Ad Hoc Committee Reports), in the, or the result of its acts and omissions re the integration or nonintegration of the Primary and Secondary Public Schools within the District, are by the Court rejected and

not accepted; and if it did heretofore accept any such stipulation or stipulations, it now on its own Motion, vacates the order accepting them.

II. SAM HAMERMAN, called by Respondent, is sworn and testifies, and is by the Court excused, subject to being recalled.

III. EVERETT WAXMAN, called by Respondent, is sworn and testifies. He is excused; Sam Hamerman shall return, until the completion of his testimony.

IV. The following Exhibits, unless otherwise noted as marked for identification, are admitted in evidence:

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V. Trial is continued to March 25, 1969, at the hour of 9:30 a.m.

VI. The Clerk shall send a copy of these minutes to each of counsel.

Dated: this 24th day of March, 1969.

/s/ Alfred Gitelson
JUDGE

APPENDIX I

SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.
PETITIONERS,

VS.

BOARD OF EDUCATION OF THE CITY
OF LOS ANGELES,
RESPONDENT.

JUDGMENT FOR DAMAGES, COSTS, AND PEREMPTORY WRIT OF MANDAMUS

This cause came on duly and regularly for trial (prior hearings having been had on December 14, 1967, and April 29, August 9, 13 and 15, and October 11, 1968) in this Department 19,

Alfred Gitelson, Judge presiding, without a jury, trial by jury having been duly and regularly waived, on October 28, 1968, and was heard on said day and on the 29, 30, 31 days of October, November 1, 4, 6, 12, 13, 14, 15, 19, 20, 21, 22, 25, 26, 27 and 29, of 1968, and February 3, 4, 5, 6, 19, and March 4, 5, 6, 7, 10, 11, 12, 13, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, and April 1, 2, 3, 4, 7, 8, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, and May 1 and 2, and June 9, of 1969.

Petitioners (Petnrs. or Students) appeared by Bayard F. Berman, Sol Rosenthal, Michael Bergman, A. L. Wirin, Fred Okrand, Thomas O. Neusom, Samuel C. Sheats, Herbert A. Barnhard, Lawrence, Sperber, and Edward Medvene, by Bayard F. Berman, and during a portion of this time Sol Rosenthal, Michael Bergman

and Loren Miller, Jr., their counsel. (Messrs. William Rintala and Peter Smoot as "PETITIONERS' POST-TRIAL MEMORANDUM ON THE EVIDENCE".)

Respondent (Board) appeared by Dr. Robert E. Kelley, Assistant Superintendent of Education, Dr. Robert Purdy, Associate Superintendent of Education, Sam Hamerman, Assistant Superintendent of Education, and by John D. Maharg, County Counsel, Clarence H. Langstaff, Assistant County Counsel, Raymond W. Schneider, Deputy County Counsel, Alfred C. De Flon, Deputy County Counsel, Ronald J. Apperson, Deputy County Counsel, Jerry F. Halverson, Legal Advisor to Board, by Jerry Halverson, Clarence H. Langstaff and Raymond W. Schneider until on or about December 29, 1968, when and thereafter his place was taken by Alfred Charles De Flon, its

Counsel.

This cause was tried and heard upon:

(1) The "SECOND AMENDED AND SUPPLEMENTAL PETITION FOR WRIT OF MANDATE" (Pet.) (filed July 6, 1966) (the original "COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION" was filed August 1, 1963).

On July 19, 1966, the parties executed and filed their "STIPULATION * * * FOR WAIVER OF OBJECTION TO CONSIDERATION OF FACTS OCCURRING SUBSEQUENT TO FILING OF COMPLAINT". Thereby they did, among other things, stipulate:

"(4) The parties hereto shall not file or make any motion herein or take any other steps intended or resulting in precluding any party from introducing in evidence or in precluding the court from

considering as material and relevant, evidence pertaining to events occurring subsequent to the date upon which the first complaint was filed herein merely because said events occurred subsequent to the date which the first complaint was filed herein. The rights of petitioners, if any, and the duties of respondent, if any, shall be determined as of the time of trial.

On July 23, 1968, it was ordered: That though by the Stipulation (filed June 6, 1968) a dismissal without prejudice had been filed and entered as to the original Petitioner, Mary Ellen Crawford (first named), that because from the date of the filing of the Complaint (August 1, 1963) the action had been designated thereby and all filings made thereunder, the caption of the cause should retain for identification purposes

only as the first named Petitioner the name "Mary Ellen Crawford";

(2) "AMENDMENT TO PETITIONER'S SECOND AMENDED AND SUPPLEMENTAL PETITION FOR WRIT OF MANDATE" (filed June 11, 1969) (Amm. Pet.) (The Petition and Amendment thereto are hereafter collectively designated as "Pet.", unless otherwise expressly stated.)

It was stipulated by Petitioners and ordered (June 9, 1969) that all of the allegations of the Amm. Pet. should be by Board deemed denied, both generally and specifically, and all affirmative defenses existing under law deemed pleaded thereto;

(3) "ANSWER OF DEFENDANT TO SECOND AMENDED PETITION FOR WRIT OF MANDATE" (filed October 14, 1966) (Ans.) (The "SIXTH FURTHER AND SEPARATE DEFENSE" (p. 5 of Ans.) was by the Court, on

August 9, 1968, overruled);

(4) "REPLY TO RESPONDENT'S ANSWER TO SECOND AMENDED PETITION FOR WRIT OF MANDATE" (filed July 23, 1968) (Rep.);

(5) It was ordered: (a) That the rights, duties and obligations of the parties shall be those existing at the time of trial and therefore no Supplemental Petitions or Answers need be filed; and (b) (12-14-67) That the period of time commencing on or about the 1st day of May, 1963 (Report of the Ad Hoc Committee on Equal Educational Opportunities made to Los Angeles City Board of Education (Court's Exh. 5-A)), and thereafter shall be the period of time to be first tried and heard as to the issues involved, that no evidence prior to said date need be or should be offered by either party, and that in this

event either party shall desire to do so, such party shall make a motion for leave to do so; and it would then be ruled upon by the Court.

Evidence, oral and documentary, was received. Argument was heard throughout the trial. Points and Authorities were filed prior to and at the close of evidence. The Court considered all of the foregoing.

The cause was submitted to the Court for its decision. The Court being advised in the premises, made and filed (2-11-70) its "MINUTE ORDER OF COURT'S INTENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT, AND FOR PEREMPTORY WRIT OF MANDATE".

On or about February 28, 1970, there was filed Petitioners' Proposed: "Findings of Fact and Conclusions of Law"; "Judgment" and "Peremptory Writ of

Mandate". On March 31, 1970, there was filed "Respondent's Objections to Findings of Fact and Conclusions of Law". On April 10, 1970, a hearing was had on the aforedescribed proposed: Findings of Fact and Conclusions of Law; Judgment; Peremptory Writ of Mandamus; and Objections. They were submitted to the Court for its decision thereon. The Court being advised in the premises, engrossed, made and filed its Findings of Fact and Conclusions of Law, constituting the decision of the Court. Pursuant thereto and in accordance therewith, it is

ORDERED, ADJUDGED AND DECREED:

I. That Board is under a duty specially imposed by law, with all due diligence and speed, to, in the exercise of the highest of good faith, do all things and take all actions reasonably

necessary to accomplish the following:

(i) Evolve and adopt a meaningful Master Plan of Integration, a plan that will realistically work within a reasonable period of time, having for its aim, purpose and object a racially non-discriminatory unitary school system comprising and applying to all of its schools as a whole and not merely for one or a group of schools, leaving others segregated; and

(ii) Evolve and adopt, as a part of the Master Plan, the methods, means, mechanics, designs, tools and techniques to make said Master Plan work; and which shall in fact work; and

(iii) The Master Plan shall be made legally effective within and upon, i.e., imposed upon, the entire of Board's District at one time. If the consummation thereof in good faith

requires the carrying out thereof in several steps over a reasonable period of time, Board may do so. The Court retains jurisdiction to determine and fix, from time to time, the reasonable periods of time for the step or steps for the carrying out and consummation of said Master Plan. The condition precedent therefor shall be good cause shown and the exercise of the highest of good faith by Board and its Executive Staff in attempting to carry out and consummate the Master Plan; and

(iv) The Master Plan shall incorporate the definition of "integration", and "integrated school", a "racially balanced school", a "segregated school", a "racially imbalanced school" and the "variations in composition of pupil enrollment", as hereinbefore provided. Board shall integrate its

schools in accordance therewith; and

(v) The Master Plan shall, among other things, by its terms provide for: the manner and means of its periodic public review; with reasonable notice to parents of children involved, so that its schools shall at all times be integrated; and

(vi) The Master Plan shall provide for, and the methods, means, manner, mechanics, designs, tools and techniques shall effect, the selection of new school sites and construction of schools for and that shall eliminate segregated schools and create integrated schools, an integrated unitary school system.

II. Therefore, Board shall, and a Writ of Mandate shall be issued herein committing it:

(1) To present to this

Court, on or before the 1st day of July, 1970, for its approval, in compliance with the Judgment of this Court and said Writ, upon notice to Petitioners and, as shall be prescribed by the Court, notice to the parents of Board's pupils of the hearing thereon, said Master Plan, together with the method, means, manner, mechanics, designs, tools and techniques for the carrying out and consummation of said Master Plan; and

(ii) That said Master Plan shall be designed for and be made legally effective and imposed upon the entire District and placed into operation prior to the school year commencing on or about September, 1970, so that in and during said school year, and under no circumstances to exceed the school year commencing September, 1971, said Master Plan shall be imposed upon, carried out

and operating within and as to all of the schools in Board's District.

The Court retains jurisdiction to, for good cause shown and the exercise by Board and its Executive Staff of the highest of good faith, extend the foregoing specified times. That only a prompt start, diligently, in good faith, pursued, to eliminate racial segregation from Board's schools, can constitute good-faith compliance and shall constitute a condition precedent to good cause; and

(iii) That Board is duty bound and shall, and the Peremptory Writ shall command it to, devote every reasonable effort, in the highest of good faith, toward initiating the desegregation of, bringing about the elimination of racial discrimination in, its public school system, at and within

the times aforesaid.

The Court retains jurisdiction to hear, approve, or disapprove said Master Plan and its methods, means, manner, mechanics, designs, tools and techniques for the carrying out thereof.

III. That Petitioners do have and recover of and from Board, as the reasonable value of the services of their Counsel upon this proceeding, the sum of $65,000.00 together with interest thereon at the rate provided by law, from and after the entry of Judgment herein and until payment thereof.

IV. That the Court retains jurisdiction, when the Judgment herein shall become final, to allow additional attorney's fees to Petitioners, for their Counsel, the sums allowed to be paid to such Counsel, for the reasonable value of

the services which may be performed by Counsel from and after the date of entry of Judgment and the issuance of the Writ of Mandate and the entry of the Order on any motion for new trial, if such motion is made, and until the Judgment herein shall become final. Said fees so allowed shall be paid by Board.

V. That the Court retains jurisdiction to appoint one or more Experts, upon motion of either party or on the Court's own motion, to assist and advise the Court in the particulars, and for the purposes, set forth in the Court's Findings of Fact, and to fix and award to such Expert or Experts, from time to time, reasonable compensation for his or their said services. The compensation so fixed and allowed to be paid by Board.

VI. Board shall not, and the

Peremptory Writ shall command it not to and prohibit it from, pending the adoption and approval of said Master Plan of Integration, do anything, including by way of specification and not by way of limitation the selection of sites, construction of new schools, construction of additions to existing schools, adoption or modification or transfer policies or transportation policies, adoption, changes or modifications of school attendance boundaries, which will maintain or continue or preserve or tend to maintain or continue to preserve the minority segregation presently existing in its schools. Board shall, and the Peremptory Writ shall command it to, and prohibit it from doing otherwise, during said period of time, only select sites and build schools and build additions to its existing schools, and adopt or modify transfer policies and adopt or modify

transportation policies, and do all other things reasonably necessary for and having as its objective and purpose the integrating of its schools and the desegregation of its schools now aggregated.

VII. That a Peremptory Writ of Mandate do issue, ordering Respondent as hereinabove adjudged and commanding it to appear befor this Court, as aforesaid, upon notice, as aforesaid, on or before July 1, 1970, at the hour of 9:00 a.m., then and there to show cause what it has done to comply with said Writ of Mandate.

VIII. That Petitioners do have and recover of and from Respondent, Petitioners' costs and disbursements herein, hereby taxed in the sum of $_____. Said sums shall be paid directly to Counsel for Petitioners.

The Clerk shall enter this

Judgment.

DATED: This 12th day of May, 1970.

/s/ Alfred Gitelson
Alfred Gitelson
JUDGE OF THE SUPERIOR COURT

APPENDIX J

IN THE COURT OF OF APPEAL OF THE

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

Case No. 822854

MARY ELLEN CRAWFORD, A MINOR ETC.

PLAINTIFFS AND RESPONDENTS,

VS.

BOARD OF EDUCATION OF THE CITY

OF LOS ANGELES,

DEFENDANT AND APPELLANT,

BUSTOP, A CORPORATION, ET AL.,

INTERVENORS.

REMITTITUR ON APPEAL FROM THE SUPERIOR

COURT OF LOS ANGELES COUNTY

The above-entitled cause having been fully argued, submitted and taken under advisement,

IT IS ORDERED, ADJUDGED AND DECREED by the Court that the orders of May 19, 1980, and July 7, 1980, are vacated, and the matter is remanded to the trial court for further proceedings consistent with this opinion. It is not our intent to disrupt the schools during the present semester. Since our decision will not become final for thirty days, the parties have ample time to take whatever legal action they think desirable prior to the commencement of the next school semester. Our previous orders dated August 6, 1980, and September 4, 1980, staying certain features of the trial court's plan, are continued in force until further order of the court.

Appellant to recover costs.

I, CLAY ROBBINS, JR., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the foregoing is a true copy of an original judgment entered on December 19, 1980, and now remaining of record in my office.

Dated: March 12, 1981

CLAY ROBBINS, JR., Clerk

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